SENATE—*Thursday, August 6, 1992*

(Legislative day of Wednesday, August 5, 1992)

The Senate met at 9:45 a.m., on the expiration of the recess, and was called to order by the Honorable BROCK ADAMS, a Senator from the State of Washington.

PRAYER

The Chaplain, the Reverend Richard C. Halvrson, D.D., offered the following prayer:

Let us pray:

* * * *there is no power but of God: the powers that be are ordained of God.*—Romans 13:1.

Eternal God, perfect in all Your ways, we pray for the leadership of our Nation in these cynical days. It is as if there is a conspiracy to downgrade, demean, and discredit those who are dedicated to public service. As realists, we know there are some in positions of authority who are unworthy and who, by their attitudes and actions, bring disrepute upon public service. But we know, also, gracious God, that the great majority are men and women of integrity who take seriously their responsibility as servants of the people. We pray Thy blessing upon these faithful men and women, that they may be encouraged in their commitment to the public good, and to the institutions of government conceived and made real in the minds and hearts of our Founding Fathers. We pray Your judgment upon those who are unworthy of high office. Strengthen our democratic institutions. Preserve them against those who, enamored of power, use them for their own personal agendas.

In the all-powerful name of Him who ordains all authority. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore [Mr. BYRD].

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, August 6, 1992.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable BROCK ADAMS, a Senator from the State of Washington, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. ADAMS there upon assumed the chair as Acting President pro tempore.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, leadership time is reserved.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business, not to extend beyond the hour of 10 a.m., with Senators permitted to speak therein for not to exceed 5 minutes each.

The Senator from Oregon [Mr. HATFIELD] is recognized to speak for up to 7 minutes.

The Senator from Michigan [Mr. RIEGLE] will be recognized to speak for up to 5 minutes.

The Chair recognizes the Senator from Oregon [Mr. HATFIELD].

Mr. HATFIELD. Thank you, Mr. President.

TEARS WE CANNOT IGNORE

Mr. HATFIELD. Mr. President, as public servants, we often hear from citizens who seek our help. It is part of our job and a major function of government to assist those in need.

I constantly remind my staff that I consider this the soul of the responsibilities as U.S. Senator.

Some of those who have come to us for help could be called victims—victims of disease, victims of discrimination, victims of poverty, victims of war, victims of joblessness, victims of hunger, and a hundred other maladies that affect our society.

But the victims who are perhaps most in need of not only our help, but the help of many others, cannot travel to see us because they have not the means. They have no money to spend, and cannot vote. They are the truly powerless in our society because they must rely upon others for their very subsistence and safety.

I am here to speak today about our Nation's children, and, more specifically, about those who have been victims of abuse.

Mr. President, last week I was shocked to read a headline in an Oregon newspaper which read: "Crimes Against Children Increase 104 Percent in Salem."

Mr. President, this is my hometown. This is a city that is the capital of our State. This is a city that would be considered as sort of a typical American middle-income, middle-class city. No great ghettos, no great poverty, just good, solid middle income. Of course, there are those who live in poverty and, of course, there are those who are discriminated against. But in relation to what we think of urban life, it is a small percentage.

Mr. President, I cannot say how disturbed I am to read that the crime rate in this same city increased less than 1 percent over the rate of the first 6 months of last year, but cases of child abuse, neglect, and abandonment, and failure to pay child support has more than doubled.

Another disturbing increase reported in this article was that the number of runaway children rose from 283 in the first half of 1991 to 357 this year in Salem, OR. Some of these increases may indicate better reporting of cases, but this only means that this problem has been worse than we realized in the past.

To have a clearer picture of this menace only serves to make it all the more repugnant. The increase in crimes against children in the Oregon community did not include listing of sex crimes. However, other studies give us some indication of the frightening numbers here as well. Estimates from statistics of the Children's Service Division in Oregon, using confirmed abuse cases from the last decade, show that a total number of females under the age of 18 known to have suffered serious physical or sexual abuse in their lives is at least 18,500 in a small-populated State like my home State of Oregon. Obviously, looking beyond the official statistics, we have to add several thousand additional young women who probably belong on this list but have never reported the incidents.

Statistics can illuminate the extent of a problem, but they cannot show us the human faces of hurt children that they represent. We must look beyond the numbers and the statistics to try to feel the real suffering in these young lives.

The scourge of crimes against children is not new. But to recognize that they have existed throughout time in all societies is not to say they are tolerable now in a civilized society. We, as a society, practice denial in this area because of the horror of what we would be forced to see. These crimes are often hard to detect and hard to prove. We turn away from the descriptions of violence, from the awful reality of placing the physically abused, emotionally injured child into the hostile atmosphere of a court of law. However, we must face these crimes, and we must attack.

This May, President Bush signed into law legislation Congress passed last year which would extend existing laws on child abuse and treatment and make grants to States to develop strategies to prevent child abuse. This is a first step. A national child abuser registration system such as that proposed in the pending omnibus crime bill would be another significant step. But we cannot rely on Government officials at any level to eradicate a disease so chronic and vile that infests the very institutions that we depend upon for the security of our young; namely, our families and family structures and our schools.

While tough laws in reaction to child abuse and neglect are critical and must be strengthened, I cannot emphasize enough the need to be proactive—proactive—all of us, on this issue. The consensus among professionals in this field is clear—child abuse and neglect is the linchpin for many of the other problems of our society. Spending time, money, and effort to prevent the occurrence of abuse will reap innumerable benefits to all of us.

In Eugene, OR, there is a program called the Lane County Relief Nursery. The director of this program is Jean Phelps. It is a relief nursery that provides therapeutic programs for abused and high-risk children and their families. It has pioneered prevention-oriented—prevention-oriented—programs that strengthen the family and break the cycle of abuse. The Relief Nursery started out as an office in Jean Phelps' car and is now a multifaceted approach to child abuse treatment named as a national demonstration project and State model program. Its success stands as proof that, while strong reaction is necessary, prevention is the key toward lowering the incident of these horrible crimes against our children.

Preventing child abuse and assisting abused children is a challenge not solely for parents, teachers, guardians, and others who are in direct daily contact with children. It is a challenge for every citizen, for all persons old enough to know a wrong when they see one, and to correct it in any way they can. As elders, each one of us is responsible for the well being of the children of this Nation. We cannot ignore their tears.

It is often said that our children are our future. What obstacles they must face in this future. What dangers they must avoid in a world where utter innocence can turn to brutality and despair in a matter of minutes. We each have a vision of what a Sun-filled childhood should be like. For some, this elusive vision may be more a feeling than a picture—the feeling of games played barefoot on freshly cut grass in a suburban field, or the simple elation of finding an abandoned ball on a city street. Now, take a moment to imagine a cloud over these feelings. Envision a dark spot in this innocence almost too horrible to face, but much too horrible to forget.

The effort to identify, report, and prosecute crimes against children cannot be strong enough. Likewise, the effort to counsel and comfort those affected by these tragedies must be enhanced. Every adult citizen of this Nation must be vigilantly committed to this endeavor.

The burden of abuse is unfair at any age, but it is intolerable upon our youth. We must be the ones to bear the burden of this battle, lest it fall upon shoulders much smaller than our own.

The ACTING PRESIDENT pro tempore. The Chair recognizes the Senator from Michigan [Mr. RIEGLE] for 5 minutes.

PRIVILEGE OF THE FLOOR

Mr. RIEGLE. I thank the Chair.

Mr. President, I ask unanimous consent that Elizabeth Gertz be afforded the privileges of the floor.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

FACES OF THE HEALTH CARE CRISIS IN MICHIGAN

Mr. RIEGLE. Mr. President, I rise today to speak on the urgent need for a national health insurance plan for America that can cover all of our people and also bring skyrocketing health care costs under control.

I am the coauthor, with Senator MITCHELL, Senator KENNEDY, and Senator ROCKEFELLER, of a comprehensive health insurance plan called HealthAmerica. The bill number is S. 1227. We think it is the best proposal on the table now to solve this problem. It imposes very tough cost controls to bring costs down, and it broadens access to cover all of the people in our country. A strong nation needs strong and healthy people, and that means, fundamentally, access to good health care for all of our citizens.

Today, I am starting to put a human face on the problems of unmet health care needs and the lack of affordable health insurance for people across our country. I have now conducted, over the last 5 years, 32 different hearings on the health care issue. Most of those have occurred in Michigan, but a number have occurred here in Washington under my direction as chairman of the Subcommittee on Health for Families and the Uninsured. But over that period of time, we have heard hundreds and thousands of individual stories of people struggling to meet their health care needs and unable to do so under the present circumstances.

I want, today, to cite two or three examples of that. I want to start with a letter from a woman in Warren, MI, Andrea Hayosh. It is an example of how high health care costs can begin to cripple the economic circumstances of an American family. Andrea is a 31-year-old widowed woman with a 5-year-old son, Michael. For the past 9 years, she has worked full time as a dental hygienist in an office with three employees. Andrea's employer cannot afford to provide health insurance coverage for her and for her son. So she has had to obtain coverage through a private insurance company at a very substantial personal cost.

In 1988, Andrea's premiums under American Community Insurance Co. were $872 a year. But by June 1991, her premiums had risen steadily to $2,600 a year, really a back-breaking expense for her. Over a three and one-half year period, her premiums have tripled. These high costs forced Andrea to drop coverage with American Community. She now has different coverage under a company called Central Reserve. She is getting that coverage for $1,800 a year, but she is very concerned that the rates are going to go up or if she has to file a claim either for herself or for her son they will discontinue her insurance, because there is no requirement for them to continue the insurance if they decide that they want to cancel that policy.

So fearing and expecting that the rate pattern will continue to go up, she just does not know how she is going to be able to maintain the coverage. Right now it is taking about 10 percent of her annual income but, as I say, that is rising. She is very concerned about this, and she sent me a letter dated June 17, 1991.

Mr. President, I ask unanimous consent that the letter be printed in the RECORD in its entirety at the end of my statement.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

(See exhibit 1.)

Mr. RIEGLE. Mr. President, I will read a couple quotes from it. She says:

> I am appalled at the cost I must pay to obtain decent health coverage for myself and son. We have the best medical care and knowledge of any country, but how do we continue to afford such high insurance costs.

I think Andrea and her son Michael deserve access to high quality, affordable health care. Clearly, we can do it in America. Every other modern nation has found a way to do this for its people. Why should our people be asked to settle for less? There is no excuse for inaction. We have all kinds of programs today in the executive branch of Government to help people in other countries. In fact, we have economic programs to help virtually every country in the world including programs to help them with their health problems. We need a program here in America. It is time we have one.

This family is not alone. I want to cite one other example. I had a hearing

up in Traverse City, MI. On a weekday evening, over 300 people came out to tell us their problems on health care. I think I spent over 4 hours talking about personal problems. Here again was a typical family. I read this out of the Traverse City Record Eagle. A woman named Tammi Lumley, an East Bay resident, said her husband just was laid off from the oil and gas industry. They depended on his insurance to pay for the medical costs of their 4½ year-old daughter, who has asthma. In one year, the costs were $20,000 in hospital costs alone. The employer agreed to pay for the premiums for 6 more months, even though the man has been laid off but then we will have no coverage. And there is no way to get coverage, no way to afford coverage and there is a life threatening problem for this young girl and there is no answer today as we stand here for her problem, because her Government turned its back on her problem and turned its back on the people.

Let me cite one other case in the Detroit News.

The ACTING PRESIDENT pro tempore. The Senator's time expired.

Mr. RIEGLE. I ask unanimous consent to proceed for 2 additional minutes.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. RIEGLE. I thank the Chair.

This is a story that ran in the Detroit News in September 1991 about a woman named Cynthia Fyfe, a single parent, employed, working very hard, who has serious medical bills. Through her work she has a modest insurance coverage program, not enough to pay her medical bills but to at least provide some measure of coverage for her. In the picture here you see her son, Anthony, who is 6 years old, the little fellow here with glasses on. He has no coverage. Her health insurance does not provide coverage for him. She cannot afford it on the outside. It is too expensive, and our country has no way of responding and helping this little fellow out in the Detroit area.

There are millions more like them. There are 300,000 children in Michigan without health insurance coverage today and additional millions across the country.

So it is time to do something about it. Here is one legislative proposal. I do not say it is perfect. We think it is the best proposal out there today and thankfully Governor Clinton and his campaign is endorsing the basic structure and philosophy and purpose of this program. I think if he is elected we will enact a national health care program.

EXHIBIT 1

JUNE 17, 1991.

Senator RIEGLE,
30800 VanDyke, Warren, MI.

DEAR SENATOR RIEGLE: I am writing to you as a concerned citizen about our health care costs. I read with great interest in The Detroit Free Press (June 6, 1991) about your sponsorship of a program called Americare.

I am a 30-year-old widowed female with a four-year-old son. I am currently working as a Dental Hygienist, in an office with 3 employees. Because insurance rates have tripled in over 3 years, my employer is unable to pay for premiums.

In January, 1988 I obtained coverage through American Community Insurance Company. At that time, my premiums were $872.00 per year. My new premium starting July 1, 1991 will be $2600.00 for the same amount of coverage. In a 3½-year period my insurance premiums have tripled.

I am appalled at the cost I must pay to obtain decent health coverage for myself and son. We have the best medical care and knowledge of any country, but how do we continue to afford such high insurance costs.

I urge you to vote and get other Senators to vote for this very much needed program. If I can be of any assistance, do not hesitate to contact me.

Sincerely,

ANDREA HAYOSH.

A MATTER OF CONSCIENCE

Mr. RIEGLE. Mr. President, President Bush yesterday said he was not going to change his thinking on the abortion issue, because it was a matter of conscience, that he was going to follow his conscience.

He has no right to impose his conscience on the conscience of every other person in this country. All well and good for him to follow his conscience in his family circumstance. But neither he, nor any other person, should tell every other person in America how to think or how their conscience should view this issue. The laws of this country and the Supreme Court decisions have said within those boundaries, that people have to make their own decisions and apply their own conscience, not President Bush's conscience, not the conscience of a given Senator, not the conscience of some other person here or there, but to apply their own individual conscience. And the President is wrong to insist that his conscience has to be applied to the thinking of every other American.

The PRESIDING OFFICER. The Senator's time has expired.

EXTENSION OF MORNING BUSINESS

Mr. GRASSLEY. Mr. President, I ask unanimous consent that morning business be extended for 5 minutes and that I may address the Senate during that time.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE FALSE CLAIMS ACT

Mr. GRASSLEY. Mr. President, I rise this morning to discuss the success of the 1986 amendments to the False Claims Act, which is the Federal Government's primary tool against fraud in Government procurement.

The amendment as sponsored in 1986 enhanced the ability of private whistleblowers with knowledge of fraud to sue in the name of the taxpayers. Under this qui tam provision of the statute, approximately $275 million have been recouped by the Treasury in just 6 years. That $275 million, $125 million was recovered in just the last few weeks—in two cases.

These huge recoveries are not the result of rigorous auditing by the Defense Department, or zealous investigation by the Justice Department. The restitution of the taxpayers in these cases was achieved through the doggedness of two lone whistleblowers.

Two weeks ago, General Electric agreed to pay the United States $59.5 million in a civil settlement for fraud in the sale of aircraft engines to the Israeli Government. The fraud was brought to light by Chet Walsh, a GE employee in Israel who discovered that his superiors at GE in the United States were conspiring with Israeli Air Force Gen. Rami Dotan to charge the United States for goods and services never provided. Walsh documented the fraud going on around him, and despite the possibility of retaliation by his employer and General Dotan, filed a suit on behalf of the taxpayers.

General Dotan is now in jail, GE has punished most of the employees involved in the fraud, and GE is planning new initiatives to prevent fraud by its agents.

Three weeks ago, the successor to the Singer Corp. agreed to pay the United States $55.9 million for overbilling on more than 1 billion dollars' worth of contracts for flight simulators. This money would never have been recovered without the whistleblower lawsuit of Christopher Urda.

Mr. Walsh and Mr. Urda would probably not have been willing to blow the whistle on the defendants if they were not entitled to a reward, a portion of the Government's recovery. Under the 1986 amendments to the False Claims Act, individuals with knowledge of fraud on the Government are entitled to sue in the name of the Government as qui tam plaintiffs.

Their private attorneys general are entitled to 15 to 25 percent of the Government's recovery—25 to 30 percent if the Government declines to join the case. This proportional reward induces employees with knowledge of fraud by their companies to take the substantial personal and financial risks involved in blowing the whistle on their employer. It also encourages third-party investigators to complement the Government's investigative resources by scouring available records for evidence of fraud.

The GE and Singer cases prove the value of whistleblower lawsuits. These cases nearly doubled, in 2 weeks, the

Government's total recovery since the law was passed a half-dozen years ago. Dozens more cases are in the pipeline. Indeed, the Government's qui tam recoveries appear to be growing exponentially.

Public contractors contemplating ripping off the taxpayers must now reckon with the possiblity that one of their own employees, who sees what's going on, will sue the company in the name of the taxpayers, in exchange for a substantial reward.

Naturally, a law that is this successful is going to upset some people. Defense contractors and other False Claims Act defendants don't like being sued by their own employees in the name of the United States. The Department of Justice doesn't always like having cocounsel in its role as the people's lawyer. DOJ, properly concerned with maximizing the Government's recovery, doesn't like to have to pay large rewards to whistleblowers that bring the Government information it would not otherwise have. So there may be efforts to limit qui tam.

Before the session is out, the Senate may be addressing some technical amendments to clarify the intent of the 1986 amendments. When the subject of whistleblower lawsuits next comes up for consideration, I hope my colleagues will all recognize that, like rewards for information leading to the apprehension of criminals, whistleblower lawsuits are an extremely effective and successful way to bring to justice firms that rip off the taxpayers. Efforts to limit these suits will only be at the taxpayers' expense, in order to make life easier for public contractors and annoyed bureaucrats. I hope Senators will join me in resisting any such efforts.

THE SITUATION IN BOSNIA-HERCEGOVINA

Mr. LEAHY. Mr. President, I want to express my strong support for demanding action to stop the killing in Bosnia.

There are no words to convey my utter abhorrence of the horrific destruction and atrocities in Bosnia. The scenes on the nightly news are heartbreaking. As we speak, another child is mangled by random sniper fire, another father loses his life from mortar shelling, another mother is forced to flee from her family.

This past Monday, grief-stricken mourners were injured when mortar shells hit in a cemetery. They were burying two orphans, killed by snipers, as they rode in a refugee bus on the way to Germany.

Ghastly atrocities are being committed in this conflict. Civilian populations are being starved and terrorized. Minorities are being harassed and intimidated. There are reports of systematic ethnic cleansing bordering on genocide. Mass numbers of civilians are being interned. Hostages are being taken. Torture, deportations, and summary executions are widespread.

After months of internal debate, the Bush administration finally decided in June to authorize the limited use of force as part of a multinational effort to provide humanitarian relief to the civilian victims of this conflict. Since then, the United States has provided approximately 40 million dollars worth of emergency relief supplies and services including food, medicine, and blankets. Much of the airlift was being accomplished with U.S. C–130 aircraft. That effort is on hold now because it is too dangerous to fly into Sarajevo.

Mr. President, our humanitarian efforts should continue, if necessary under U.N. military protection to ensure delivery of food, medicines and other supplies, especially in the Moslem areas of Bosnia. But humanitarian aid, however desperately needed, will not end the fighting. U.N. protection convoys will not stop the mortars and sniperfire.

The United Nations has passed two resolutions relating to the conflict. An April 7 resolution, No. 752, demanded a cessation of all fighting. A May 30 resolution, No. 757, imposed economic sanctions against Serbia and Montenegro. These resolutions have been ignored by the Serbian factions indiscriminately bombarding Sarajevo and other Bosnia cities.

This body passed a resolution on June 12 which called on the President of the United States to urge the U.N. Secretary General to provide a plan and budget to the Security Council for intervention to enforce the Security Council resolutions. That resolution has been ignored by the President. Secretary of Defense Cheney recently stated that the situation is tragic, but the Balkans has been a hotbed of conflict for centuries.

Mr. President, that kind of answer just is not good enough. The United States, as a leader in the United Nations, cannot allow the tragic, bloody history of this region be a justification for ignoring the massive suffering of innocent combatants, and above all, the ethnic cleansing and detention camps with their reports of widespread killings.

The U.S. Senate cannot force the United Nations to take further action. But we can call upon the President to exert his substantial influence and provide the leadership needed to bring about decisive U.N. action, including military force if necessary, to enforce its resolutions.

Mr. President, too many have died, too many children have suffered. Cease-fire after cease-fire in Bosnia has failed. The United States cannot be the policeman of the world. But we can give strong leadership in the United Nations and the international community to bring peace and a cessation of hostilities to the region.

I call on President Bush to listen to those who are asking him to send a strong signal to the aggressors in this bloody conflict that the world will not continue to stand by and watch the destruction of a people. We should and can act together to end this tragedy.

SOUTH DAKOTA DEBATERS EXCELL

Mr. PRESSLER. Mr. President, it is with great pride that I rise to honor four South Dakota college debaters. All four members of the forensics squad at Augustana College in Sioux Falls, SD, qualified for the 1992 intercollegiate National Debate Tournament. The team of Michael LeMay and Chris Moorhead was among the top 16 debate teams nationwide. This gave them prebid status for the tournament. Mr. LeMay and Mr. Moorhead ended their final college debate season with a 57–22 record. Augustana's second team of Scott Metcalf and Shane Semmler qualified for nationals by placing third at the district IV qualifying tournament.

Years ago, I was a debater on the University of South Dakota forensics squad. Earlier I had participated in oratory at Humbolt High School. While that was a number of years back, I still have a strong interest in forensics. Experience in intercollegiate debate enhances the educational opportunities of all those who participate. Exposure to the rules of argumentation offers students lifetime learning tools.

Mr. President, in recognition of the dedication and efforts of the debaters at Augustana College, I ask unanimous consent that an article printed in the summer edition of Augustana Today be printed in the RECORD following my remarks.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

DEBATE TEAM PLACES NINTH IN NATIONAL TOURNAMENT

(By Marcee Ekstrum)

Augustana debaters Chris Moorhead and Mike LeMay placed ninth in a 28-team national tournament hosted by Miami University in Oxford, Ohio.

Moorhead and LeMay, seniors from Omaha, Neb., advanced to the final round by posting a 6–2 record in the preliminaries. They lost 3–2 to Northwestern University of Evanston, Ill., in the final round.

"Chris and I both qualified for nationals all four years," LeMay said. "I'm disappointed that we didn't win the national tournament since that is every debater's dream. I'm very happy with our debate career overall."

LeMay and Moorhead were debate partners at Millard North High School in Omaha. They were roommates for seven semesters at Augustana.

"I attribute all the success that I've had in debate to my fellow teammates, especially my partner, Mike, and my coach, John Bart," Moorhead said. "Without John I would not have enjoyed any of the successes that I had."

Bart is an associate professor of communication and director of forensics.

This year, for the second time in their college careers, LeMay and Moorhead received an at-large bid to the national tournament. A panel of college coaches ranked the Augie duo among the nation's top 16 teams.

During the regular season, LeMay and Moorhead compiled a 57–22 record against the nation's top teams. They were the only team in the nation to post a winning (3–1) record against Dartmouth.

Augustana's second team of Scott Metcalf and Shane Semmler, sophomores from Sioux Falls, also qualified for the nationals with a third-place finish in the District IV competition at the University of Nebraska.

TODAY'S "BOXSCORE" OF THE NATIONAL DEBT

Mr. CRAIG. Mr. President, Senator HELMS is in North Carolina recuperating following heart surgery, and he has asked me to submit for the RECORD each day the Senate is in session what the Senator calls the "Congressional Irresponsibility Boxscore."

The information is provided to me by the staff of Senator HELMS. The Senator from North Carolina instituted this daily report on February 26.

The Federal debt run up by the U.S. Congress stood at $3,998,239,449,934.51, as of the close of business on Tuesday, August 4, 1992.

On a per capita basis, every man, woman, and child owes $15,565.89—thanks to the big spenders in Congress for the past half century. Paying the interest on this massive debt, averaged out, amounts to $1,127.85 per year for each man, woman, and child in America—or, to look at it another way, for each family of four, the tab—to pay the interest alone—comes to $4,511.40 per year.

(At the request of Mr. DOLE, the following statement was ordered to be printed in the RECORD:)

FUND FOR DEMOCRACY AND DEVELOPMENT

• Mr. HATCH. Mr. President, in June of this year, former President Richard Nixon led a mission to Moscow on behalf of a new organization founded specifically to mobilize private sector support for the nations of the former Soviet Union, the Fund for Democracy and Development.

The Fund has mounted a strong bipartisan effort to involve the private sector in humanitarian relief activities and to provide support to small and intermediate businesses throughout the former Soviet Union. President Nixon serves as the honorary chair of this group, and Vice President Walter Mondale and John Kluge are the cochairs. This organization has established a bipartisan advisory council to help provide direction and structure to its important activities. Advisory board members include former Cabinet officials Bill Simon, Jim Schlesinger, and Edmund Muskie, as well as the former chairmen of the Republican and Democratic Parties, Frank Fahrenkopf and Charles Manatt. In addition, the Fund enlisted the support of the private sector. Representatives from private industry include Dwayne Andreas, Maurice Greenberg, Lee Iacocca, Jack Valenti, Drew Lewis, and John Murphy.

Under the leadership of President Ron Scheman, the Fund recently designed a program to strengthen Russia's embryonic private sector. Members of the Fund firmly believe that the engine of economic growth in Russia over the short term will come primarily from emerging small and intermediate size businesses.

These firms are important for Russia because small enterprises are labor intensive and require only limited capital investment. These small enterprises rapidly disseminate business skills in management, production, marketing, and distribution that further stimulate economic growth. Russian entrepreneurs are eager for technical support that can be contributed by U.S. businesses, and in this environment, the opportunities for joint ventures with American firms will be enormous.

Mr. President, during meetings in Moscow, President Nixon discussed the role of the fund in helping to generate credit and technical support for small firms in Russia. He raised the issue with President Yeltsin and other senior officials in the Russian Government, all of whom lent their full support to the Fund's activities. In accordance with these discussions, the Fund has tailored a number of its current projects to address the principal constraints to the growth of the fledgling business sector—the lack of credit and the absence of technical skills. The Fund's strategy to deal with these problems include:

First, developing business training programs for new and recently established businesses;

Second, establishing credit facilities for small and medium businesses in association with cooperating business associations and emerging commercial banks;

Third, facilitating participation of U.S. business in small and medium-size joint ventures or pairing with new Russian entrepreneurs.

Mr. President, this multifaceted approach will enhance Russian entrepreneurs' understanding of free-market principles and institutions. However, the Fund also endorses the establishment of credit facilities designed to help small firms get started and obtain necessary capital. Without the provision of credit, technical assistance alone will have little effect. Unfortunately, it is difficult for these firms to acquire even limited amounts of cash due to the restructuring of the Russian economy and the shortage of available capital. In addition, the banking system is rudimentary and most new entrepreneurs lack collateral. The Fund's development program seeks to resolve this problem by establishing a small business investment fund to defray the costs associated with starting a new business.

Mr. President, the Fund's strategy holds great promise in creating trade and investment opportunities for United States businesses in Russia and in fostering viable commercial enterprises in Russia. This approach opens the way for investors to enter into joint ventures with responsible Russian firms and develop reliable information about potential investment opportunities.

Mr. President, the Freedom Support Act that the Senate recently passed was an extremely important piece of legislation. However, the best assistance that the United States will ultimately provide the CIS will be advice concerning privatization of state-owned industries and assistance with economic reform. In conclusion, I commend the Fund for its fine work, and I continue to believe that the administration should use the Fund's experience and expertise to help establish a viable and robust private sector in the CIS.•

THE DEATH OF WILBER G. SMITH

Mr. DODD. Mr. President, I rise to salute Mr. Wilber G. Smith, a prominent figure in Connecticut politics for nearly 30 years, who died on July 31 after losing the last of a lifetime of great battles to cancer. Many who observed his career and worked alongside Mr. Smith in the political trenches of the Connecticut General Assembly, where he served as a State senator from Hartford in the 1970's and 1980's, knew him as a warrior for whom no battle against perceived injustice was too trivial or inconsequential. Indeed, Wilber Smith dedicated his life to the cause of social justice, carrying into Connecticut in the early 1960's, the visionary momentum of the civil rights movement.

Migrating from his native town of Orlando, FL, to the north end of Hartford while still a teenager, Wilber Smith was raised on the kind of inequity and injustice he would fight so hard against in later years. His childhood ran squarely up against the southern Jim Crow laws which fostered dual societies along the racial divide. Educated in segregated Florida schools before enrolling in Hartford's Weaver High, Mr. Smith would witness the evil of racism firsthand when his dying brother was denied a life saving kidney dialysis machine because the few in service were reserved for whites. His was a life fueled by a sense of mission and responsibility, and his aggressive policy making as a legislator reflected

a deep indignation and resolved vigilance to keep American Government faithful to the promises of its Constitution.

There was nothing covert or subtle in Wilber Smith; everyone knew exactly what he meant, though many were not comfortable with his message. But then Mr. Smith's political credo for social change did not accommodate the comfort of the guardians of the status quo. His inimitable brusque and straight forward style compelled the audience of the political leadership and demanded that attention be directed to the undeserved in the community. Indeed, Mr. Smith effectively championed for the rights of the poor, women, minorities, prisoners, and consumers—groups he saw as underdogs, estranged from the instruments of power and influence.

Though in later years Wilber Smith was unsuccessful in his efforts at regaining a seat in the general assembly, he never wavered from the course he set as a young man. His career remained animated by the same themes of advocacy and activism. He was twice elected to the leadership within the NAACP, heading the State chapter, and the Greater Hartford chapter up until his death, and was awarded the NAACP Roy Wilkins Civil Rights Award for Lifetime Achievement in Civil Rights. He served as the equal opportunity coordinator for the town of Manchester and worked for time with the State Office of Policy and Management in an effort to incorporate affirmative action programs and policies within that agency's employment and training division. After achieving his degree in law from the University of Connecticut School of Law in 1986, Wilber Smith served as top aide and security adviser in Connecticut to the Reverend Jesse Jackson during his bid for the presidency.

Wilber Smith was a role model to a generation of African-Americans in Hartford who witnessed his tireless commitment to the empowerment of all Americans. His persistence broke down barriers and opened doors; his innovative approach to solving the economic problems of the inner city resulted in precedent setting legislation calling for the creation of enterprise zones, to encourage companies to invest in and do business in impoverished urban areas. In his personal life, too, Wilber Smith was charged with the charisma and faith of a minister's son, galvanizing his friends and family with the determination to move forward, to work for justice and to never give up. It is fair to say that Wilber Smith was a man who practiced what he preached.

I hope that my colleagues will join me in expressing sympathy for the family of this fine man who contributed so much to the people and State of Connecticut.

COMMENDING YVONNE RILEY AND MERLE ENGLISH

Mr. MOYNIHAN. Mr. President, I rise today to call to the attention of my colleagues two remarkable speeches by two remarkable women.

On June 11, Yvonne Riley, a student, and Merle English, a reporter for one of our leading newspapers, New York Newsday, each rose to address the commencement of the New York City Technical College held at Carnegie Hall. These speakers were not remarkable for their eloquence alone, but also for their insight.

Ms. Riley, who spoke first, talked about the importance of the family, calling it "the core of every society, the building blocks of a nation."

Mr. President, we are only beginning to learn, or relearn, this fundamental fact. We certainly are just beginning to discuss it candidly after a generation-long silence, brought on, I think, by fear. Fear, that is, of appearing to criticize. Ms. Riley, however, seems not to fear the truth, and we would do well to heed her words.

Ms. English addressed an equally difficult topic, one especially sensitive to recent graduates: The future. She notes that pessimism is widespread today, particularly on economic matters. Many young people find few opportunities in the work force, and have little reason to believe that their prospects will improve.

But they should not despair, she reminded them, because they will always have themselves, their will, their resourcefulness. "America is still a land of opportunity," she said. "People are quietly making millions, not just by winning the lottery, but by creating new goods and services or advancing existing ones, or by formulating ideas that improve the human condition. Why not you?" Why not, indeed.

Mr. President, it is refreshing in these times to see people like Yvonne Riley and Merle English thinking and speaking out. We should pay them mind. I commend and thank then, and I ask that their speeches be printed in the RECORD.

There being no objection, the speeches were ordered to be printed in the RECORD, as follows:

ADDRESS GIVEN BY NEW YORK NEWSDAY REPORTER MERLE ENGLISH AT THE 52D COMMENCEMENT EXERCISES OF NEW YORK CITY TECHNICAL COLLEGE, JUNE 11, 1992, AT CARNEGIE HALL

Good morning, President Merideth, distinguished guests, faculty members, parents and friends, and a very good morning and congratulations graduates.

This is a very special moment, because it speaks of accomplishment. And I feel honored and truly privileged to have been asked to address you on this most auspicious day.

In the week following the Rodney King verdict and the outbreak of violence it generated, the Rev. Calvin Butts, pastor of Abyssinian Baptist Church, spoke at a prayer service at Berean Baptist Church in Bedford-Stuyvesant.

In a moment of levity, he asked if anyone knew what kind of car the disciples drove on the day of Pentecost. "A Honda," said Butts, "Because they were of one accord."

It is in that spirit of oneness and harmony that I am here with you today as you celebrate a new milestone in the marvelous adventure that is life.

A commencement address is usually delivered to young people going out into the world. But many of you are already in the world, having had to work to pay your tuition. Some of you had children to support as well.

And you did it during trouble times. At one point last year New York City Technical College was threatened with a cut-off in funding. Yet you continued to work toward this day. And here you are.

You have every right to rejoice in your achievement. And so do your instructors, and your family, because they understood the sacrifices you made, the limitations you overcame, and extended themselves to ensure that you made it here. Earning a degree is no small feat, especially against the odds many of you must have faced.

Now you are vibrant, eager to offer your skills in the marketplace, or to further develop and hone them in a job you already hold or through continued schooling. But as you step forward, what kind of world awaits you? You, from whose ranks should emerge the next generation of professionals, entrepreneurs, innovators, leaders, movers and shakers?

A recession—many say depression—has the economy in a stranglehold. Analysts point to indicators that shroud our hopes in gloom. You hear and read: The class of '92 faces the worst job market in two decades. Members of last year's class are still looking. And there's a new message being circulated: Put the American dream on hold. Scale back expectations. Lead a simpler life. Renounce cherished dreams.

Just when it's your turn to enjoy a piece of the pie.

Well, I may seem like a Pollyanna, but this is still a bountiful world. I believe there's a slice of the pie for every one of you. I admire the attitude of a graduating student who said, "I believe there's a job out there for me."

When the economic pundits say you will be competing in a job market that holds little hope and a lot of challenge, they want you to be realistic. But I reject the crippling spirit of despair engendered by that kind of forecast. I have reason to be optimistic about what the present, and the future, holds for you, Class of '92.

The occupational outlook for the next five years, according to the State Department of Labor, estimates a growth of 89,000 jobs in New York each year, and service jobs will require the largest number of new workers. Some 23,870 additional people will be needed every year, and the professional and technical occupational group has the largest projection for growth openings, some 7,510 per year.

Demand for new managers is estimated at 4,610 per year through 1996.

Clerical jobs will provide 6,880 opportunities annually. Many of those positions will come from small businesses, about 59 percent from companies with fewer than 20 people.

Another factor in your favor is that you, as a group, reflect the diversity of the 102 different nationalities represented in the student body of New York City Technical College. As we approach the year 2,000—just eight years away—the workforce will be

more diverse. Population and labor force growth rates for blacks, Hispanics and Asians are expected to exceed those for whites.

I am projecting good results for you, also, because the initiative, commitment, perseverance, discipline, and resilience it took to bring you into this magnificent hall for this occasion are armaments that will serve you in attaining your new goals and ensuring tomorrow's successes.

And you are further equipped with other exemplary qualities. Even as you burned the midnight oil to accumulate credits, you found time to demonstrate your concern for others. Students in the hotel and restaurant management division prepared and served Thanksgiving and Christmas dinners for homeless people. Those in legal assistant studies helped the poor file claims in Small Claims Court. I heard a term used to describe people who engage in that type of philanthropy—community antibodies—those who give of themselves to help neutralize some of the toxins of urban living. Cleave to this habit of sharing and seeking the welfare of others, and you will find that the liberal soul shall be made fat and he that watereth shall be watered also himself.

You should therefore sally forth with great expectations.

For pessimists, this may be the worst of times, but it can be the best of times for the resolute optimist. Every generation is presented with its own challenges, and men and women of vision have found opportunity where naysayers saw none.

Of the more than 50,000 graduates this college has produced, more than 600 are chief executive officers or owners of businesses. It is therefore not difficult to envision some among you following in their footsteps, or becoming innovators, creating and providing new opportunities for yourselves and others.

And many of you will do it right here in this soul-trying yet ceaselessly fascinating city. A lot of people have grown weary of the drugs, the violence, the grafitti and seeming despair of New York, and moving out. But others are moving in. And many are staying put. There are examples all around of people who refuse to flounder in darkness and are doing more than lighting candles of hope.

Right now, in Brooklyn, one church group of 1,500 people, with pooled funds, is buying boarded-up homes and property and renovating them to help revitalize blighted neighborhoods. Skilled church members are hired to do the work. And as the bishop drives around looking for new acquisitions, he offers jobs to enterprising small business people he encounters.

Other groups are forging partnerships with banks to plough back money into struggling communities whose progress has been stymied by redlining. They want accessible loans to provide truly affordable housing and business development that result in jobs.

Across the street from your college, in the last two years, a new Downtown has arisen, a symbol of faith in the future.

Don't give up on New York. Keep always before you the vision not only of how things are but how they can be and work toward that. Believe that the best is yet to come.

America is still a land of opportunity. People are quietly making millions, not just by winning the lottery, but by creating new goods and services or advancing existing ones, or by formulating ideas that improve the human condition. Why not you? When doubt of your capabilities creeps into your mind, tell yourself, "If others have done it so can I."

An Indian wise man says people who think they have no power to act on their dreams go through life in a somnambulistic state. He refers to them as one-horsepower people. What they need is a tiger in their tank.

If you contemplate entering a field you might look at the competition and hesitate, thinking that every avenue of activity is already overcrowded, so why try at all? With this line of thinking you will have become deluded with a consciousness of limitation. There is always room for that which you, uniquely, have to give.

But you must be untiring in your zeal, because getting what you go after will require effort. As you have learned by experience, "Heights by great men reached and kept were not attained by sudden flight but they while their companions slept were toiling upwards through the night."

I personally do not believe life was meant to be a vale of tears. And I am convinced that we become what we believe. Therefore be careful what you give your attention to. As the late writer David Seabury said, "What we do with our attention decides our lives. If we neglect getting better command of attention we can be drawn into attitudes and habits that curtail our chance of success, our share of the best joys that life has to offer."

The issues of race are ever before us, because Greed, and its accomplice, Domination, impede human brotherhood. But while some of your energies must necessarily be devoted to the drive for justice, do not be sidetracked from the truth: that you share equal citizenship of the earth with everyone else. That this is your world too. That you have a right to be here. Stake your legitimate claim as an heir with equal rights to the planet and to share in the privilege and responsibility of managing its resources.

Now, as you reach for individual empowerment, some of you might have to start small. My advice is, Don't turn down foot-in-the-door opportunities that have the promise of better prospects. Before my graduation from high school, two of my teachers who believed I had the aptitude to become a reporter, secured a spot for me as a typist in a newspaper office. The rest, as they say, is history.

You may have to accept employment that is not in line with your ultimate goal. If you must have the wherewithal to make ends meet, accept it, while using every spare moment to work toward your goal. But while you work outside your desired field, approach what you are doing with enthusiasm. Do nothing grudgingly. Be willing to learn. Be helpful. Regard every task as another arrow in your quiver of experience. Bloom where you are planted. It will serve you well some day.

And when you present yourself to be considered for a position, a start-up loan, or any other opportunity you might seek, do not be put off by perceived slights. Use them to your advantage. A little anecdote will illustrate what I mean. I believe it was George Washington Carver who tried to interest potential financiers in developing the dozens of uses he had found for the peanut but was left in a room for almost an entire day, with nothing for company but a broom. He didn't grumble or stalk out. Instead he occupied himself by sweeping the room over and over until the floor gleamed. Impressed with Carver's productive use of his time, the financiers gave him the hearing he wanted.

I'm not sure if that story has anything to do with peanut butter, but the lesson here is that Carver made the best use of time he was investing in a goal and it won him points.

As you seek to sell your skills, or promote an idea, do not fear rejection. The exigencies of life that press you to find money to pay bills and feed yourself and your family may sometimes make you desperate enough to want to give up. But success may take time. It definitely requires persistence.

Chester Carlson knew he was onto something when, after years of poring over books in the New York Public Library he discovered a way to transfer an image onto paper. He was turned down by IBM and several other large firms as he sought to have the process developed. Finally, a small company in Rochester, agreed to work on it. The result was the first automatic copying machine, which made the Xerox Corporation, and Carlson, rich.

Defeat is a temporary test for you. A detour on your way to success, if you resolve to make it so. I understand that the manuscript for the book "Gone With the Wind" was rejected more than 300 times.

There may be times when you feel discouraged, frustrated, or downright dejected if you run out of funds or seem to have run into a dead-end. Try to guard against excessive worry. Worry, if pampered, can lead to sickness when you most need to be healthy. Someone said worry is best cured if treated immediately.

Replace worry with creative thinking. After all, is worry productive? No. But that energy, given to thoughts of what can I do until I can do what I want to do, is sure to produce something positive. When along your path to success you find hazards in your way, regard them not as insurmountable obstacles but as detours, challenges to go under, over or around on the way to your objective. Don't fall into negative expectancy.

And while you may have to lower your sights from time to time, continue to hold fast to your vision of the larger picture. There's a lesson in this little poem, by Jessie B. Rittenhouse called, "My Wage."

I bargained with life for a penny
And Life would pay no more
However I begged at evening
When I counted my scanty store

For life is a just employer
It gives you what you ask
But once you have set the wages
Why, you must bear the task

I worked for a menial's hire
Only to learn dismayed,
That any wage I had asked of life
Life would have willingly paid

And now a word to the single mothers among you. In recent weeks Vice President Dan Quayle came under fire for criticizing, via Murphy Brown, mothers raising children without a father in the home. He was intimating that no worthy individual can be the product of such a setting. He should know that single mothers have reared some of this country's finest citizens. Jesse Jackson, for one. And Dr. —— the young black surgeon at Johns Hopkins Hospital who separated Siamese twins attributed his success to his upbringing in a home where his mother was head of the household.

In conclusion, I commend to you the Buddhist precepts of right thinking, right speech and right action. Let your stride show purpose. Let the world know that you are on a mission by your comportment.

Embrace each day as a gift, because that really is what it is, and reflect that recognition in your treatment of those around you.

Be respectful. Be courteous; civility is not servility.

Practice the golden rule: do unto others as you would have them do to you. And while

being alert for evil, look only for the good in life; you're more likely to find it.

Make your own joy. Don't rely on others for your happiness.

Develop the habit of saving. A dollar a day put away becomes $365 at the end of the year. Compare that with nothing.

Guard your health, because without health you can accomplish nothing, and you won't be able to enjoy your accomplishments.

And while you are about it, take time, as they say, to smell the flowers.

You will need all of this in a world that is entering a new millenium facing global warming and threatened by the plague of AIDS. But it is a world ready for change, and still willing to give of itself with a more loving husbandry of its people and resources.

You, brimming with—have the potential to be change agents. Sitting among you might be someone who will play a role in solving the vexing problems of our global village. Consider it a new frontier.

When you go from here today, if you take nothing else from these thoughts I wish you would remember the last line of this verse by Eliza Cook:

The hills have been high for man's mounting
The woods have been dense for his axe
The stars have been thick for his counting
The sands have been wide for his tracks
The sea has been deep for his diving
The poles have been broad for his sway
But bravely he's proved in his striving
That where there's a will there's a way.

THE 1992 GRADUATING CLASS OF NEW YORK CITY TECHNICAL COLLEGE VALEDICTORY ADDRESS, YVONNE RILEY, HOTEL AND RESTAURANT MANAGEMENT, DR. L. RIVERS—COACH

President Merideth, Vice-Presidents, Deans, Faculty, honored guests, parents, friends, and fellow graduates; I am indeed honored to be here this morning on the stage of Carnegie Hall-representing the 1992 graduating class of New York City Technical College.

I have the trusted responsibility of my peers to present to you our pride of achievements, our satisfaction of having reached another milestone, our optimism for the future, and our anticipations of the good life to follow.

However, we the graduating class of 1992 are realists, and we are quite aware that our humanity, our world at this time is laden with many complex, vexing problems; and we who sit here today as graduates are tomorrow's leaders who must help to solve these problems in order to realize our individual goals and social imperatives.

I have often been reminded by my parents who sit proudly among us this morning, that when one of our relatives failed to measure up to family expectations, we owed it to that member to give him or her all the support and encouragement needed for him or her to try again. In the words of one relative, and I quote "It's because we are a family," end of quote, and because we are a family, we are obligated to see that family members have roofs over their heads, food in their stomachs, and warm clean clothes on their backs. As a family, we are obligated to see that family members are safe, that they have good health, they can laugh, can plan a future, and think well of themselves. As a family, members should know that they are loved and respected for being members of that family.

We the graduating class of 1992 are members of intact families, and many of our loved ones are here today. We are also members of religious families, and political families, and we certainly are members of the family called New York City Technical College—a family whose members have advised us, counselled us, cajoled us, mentored us, motivated us, instructed us, to bring us to this moment in our development. When we end this commencement ceremonies, we join an illustrious alumni, and as members of the City Tech family, we will expect and be expected to make worthwhile contributions to our immediate families, and to our larger families.

The family is the core of every society, the building blocks of a nation. Within the family structures, we are shaped, molded into that which we become. What happens in each family affects the larger social structures called the neighborhood, the community, the nation, and the world.

In recent years, we have witnessed an unrelenting derosion of the intact family structure that has fostered the degeneration of neighborhoods, the community, the nation, and of course the world. Families build and re-build the values by which larger social structures survive. Our systems of values are built and influenced by those in our immediate surroundings. This is particularly true of the children.

Economist Sylvia Ann Hewlett in her latest book "When the Bough Breaks," exclaims that Americans, as a nation, have allowed a generation of children to waste away. Asked about the argument that working women have brought on these problems, Hewlett maintains that working mothers must not be the scapegoat. They pay a steep price for motherhood. Real hourly wages have fallen 19% since 1973 she says, and so most families need two incomes. If women did not work, the American family would be in worse financial trouble. We persist in thinking of childcare as a woman's issue. It is not. Fathers are more to blame Hewlett says for the parenting deficit in today's society. 24% of the children in this country are growing up without fathers. At one time, society viewed divorced fathers as irresponsible, today we see them as available bachelors. Hewlett points out that while marriage may not last, parenthood is forever.

We are living with the appalling consequences of neglect. Teenage suicides have tripled since 1960. Since 1971, the number of teenagers hospitalized for psychiatric care has increased from 16,000 to 263,000, and more than 80% of families have no fathers at home.

Confusion, stress and emotional deprivation in the home are robbing our children of the chance to succeed. We are facing a growing labor shortage, and because of the rising skill demands of the workplace, many of our dropouts are simply unemployable. Hewlett shows that the problems afflict middle-class children as well as inner city poor. Even high school graduates fall short in meeting the demands of the workplace. Chemical Bank has reported that it must interview 40 high school graduates, to find one—just one person who can be trained to become a teller. All they were asking for, was an eighth grade education.

We the 1992 graduating class must be extremely concerned about what is happening to the American family. I agree with Hewlett that America is treating its children like excess baggage, and children of all races and income levels are gravely suffering. Nearly one-third of our children drop out before completing high school, only 6% do so in Japan and 8% in Germany.

Recently, in response to Vice President Dan Quayle's reaction to the TV show "Murphy Brown," a single woman electing to be a single parent, David Hinkley wrote in his Daily News column, "Critic at Large" that the Vice President cloaked much of his talk in cheap rhetoric, like the implication that loose, irresponsible women bear a disproportionate share of the blame for the dismal state of the cities.

Director John Singleton's "Boyz in the Hood" last year's most powerful and successful black film, made the argument that a solid community must be built from inside, starting with the intact family. As kids discover the world, Vice President Quayle said they make choices about where to go and whom to follow. The more strong, successful adults they see, the better the chances they will follow one.

The strong role model theory was argued 30 years ago by Malcolm X, who was not the first, and its advocates today run from "radical" Muslims to the most mainstream of community leaders, in schools and churches.

On behalf of the 1992 graduating class, I accept the challenge to find solutions to save the structure of the intact family. When we do, we will begin to understand the problems of poverty, unemployment, poor health, teen-age pregnancy, child abuse, spouse abuse, racism, sexism, ageism, and of course drug addiction and other forms of social woes.

In conclusion, I want to thank my parents and all other parents for keeping the family intact, for understanding and extending themselves to support other families. For keeping the neighborhoods, building the community, and serving as role models for us to be the kinds of persons who will give the world a future. Thank you.

PASSAGE OF DEPARTMENT OF TRANSPORTATION APPROPRIATIONS

Mr. PRESSLER. Mr. President, I rise today to thank three separate Senate committees who realized there was a serious problem in our country and have worked hard with me to help correct it. I am referring to my legislation regarding energy pipeline safety.

A bill that I previously introduced as S. 2375 was accepted as an amendment by the managers of the energy bill, H.R. 776. I thank my colleagues, Senators JOHNSTON and WALLOP, for their cooperation in getting this legislation adopted.

I should add that in an effort to ensure these new positions are authorized, I have been working with the Commerce Committee to have my legislative language included in the legislation reauthorizing pipeline safety programs currently being worked out in conference committee. I thank Senators EXON and KASTEN for their assistance in my efforts there. I am confident that by one of these means, the additional inspectors called for in S. 2375 will be authorized.

My legislation calls for the addition of 12 inspectors within the Office of Pipeline Safety. These inspectors would assist in the development of State hazardous pipeline safety programs. Their primary focus would be inspections in States that do not have

their own hazardous liquid pipeline safety programs.

Funding for these 12 inspectors was included in the recent Department of Transportation appropriations bill, H.R. 5518, which has passed the Senate. I would like to thank the chairman and ranking member, Senators LAUTENBERG and D'AMATO, for their cooperation in providing the funding for the positions created by my legislation.

I firmly believe that each of these committee actions will have a significant impact on improving the safety of energy pipelines in our country—both to people who live and work near them, and to the environment. Again, I express my thanks to all Senators and staff members involved in helping me in my efforts to see the provisions of S. 2375 become law.

THE SITUATION IN BOSNIA-HERCEGOVINA

Mr. DIXON. Mr. President, I am deeply and profoundly troubled by the most recent reports of the situation in Bosnia. Indiscriminate shelling and killing of Bosnian women and children by Serbian forces have created a grim picture of a place gone mad. It is a hell on Earth.

Recently, there have been numerous, albeit unconfirmed, reports of Serbian-run camps within the territory of Bosnia filled with Bosnian and Croatian men, women, and children. The descriptions by Bosnian refugees of these camps remind the listener of concentration camps—incredibly squalid conditions, meager food, filth and vermin, torture and killings by masked Serbian guards. The State Department knows about the camps. Its spokesman described them as horrible, yet, the United States, nor any other nation has demanded access to the camps.

Mr. President, does anybody care?

The Serbs have embarked on a process of ethnic cleansing in Serb populated parts of Croatia and Bosnia. If the Serbs cannot convince a non-Serb to move from their home in Serbia, they will be shot. The euphemism "ethnic cleansing" should send chills down the spin of all Americans. Ethnic cleansing is nothing but a fancy term for genocide.

Fifty years ago the world was horrified to learn of concentration camps in Germany, and the genocidal policies carried out within those walls. Out of the horror of World War II, the nations of the world came together in the form of the United Nations, believing that such a forum could help resolve disputes, ensure the protection of human rights, and see to it that such atrocities never happen again. The founding charter of the United Nations makes its purpose clear in chapter I, article I:

To maintain international peace and security * * * to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression. * * *

The United Nations has the capacity and authority to act more assertively to resolve conflict. However, its recent history of inaction in places such as Pol Pot's killing fields in Cambodia leave this Senator disquieted.

The European Community, under the leadership of Britain's Lord Carrington, and our own Cyrus Vance have strived mightily to calm the waters of a thousand-year-old simmering brew, now boiling violently. There is no indication at this time that Serbian President Milosevic, is interested in peace. So far, the Serbian Government has ignored the pleas for peace, ignored the condemnation of the world for its actions, and ignored the calls to lay down their weapons, and talk peace. It has illegally occupied the hills around the Olympic city of Sarajevo, and proceeded to blast the Olympic spirit of peace to smithereens.

Will the world fiddle while Sarajevo burns? Bosnia may not have oil, but we should be just as outraged about the aggression as we were in Kuwait. It is human suffering, and not oil reserves, that should prompt our concern, and dictate our response.

I am proud to cosponsor the DeConcini-Lieberman resolution which calls upon the President to call on the United Nations to convene an emergency session of the Security Council for the purposes of authorizing all necessary means to bring an end to the wanton violence in Bosnia. The resolution is right on the mark for calling upon the United Nations to live up to its mandate. The nations of world, working within the United Nations framework, must stop fiddling and start acting.

Further, the United Nations must demand that the International Red Cross have access to all prison camps in what had been Yugoslavia.

All options to alleviate the suffering in Bosnia must be seriously considered.

If all the nations of the world adhere, like the United States has, to a noninterventionist policy to conflicts around the world, does it not tacitly permit an aggressor to commit atrocities unencumbered by international pressure?

The United Nations was not an impotent bystander in the Korean conflict and in Kuwait, but seems to have lost its voice in this instance.

War has once again stained the European continent, Mr. President. Will the world yet again allow history to repeat itself? I pray not.

I thank my colleagues.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

DEPARTMENT OF THE INTERIOR AND RELATED AGENCIES APPROPRIATIONS ACT, FISCAL YEAR 1993

The PRESIDING OFFICER. The Senate will now resume consideration of H.R. 5503, which the clerk will report.

The bill clerk read as follows:

A bill (H.R. 5503) making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1993 and, for other purposes.

The Senate resumed consideration of the bill.

Pending:

Fowler Amendment No. 2902, to reform the administrative decisionmaking and appeals processes of the Forest Service.

The PRESIDING OFFICER. The Senator from Georgia.

AMENDMENT NO. 2902

Mr. FOWLER. Mr. President, this is round 2 or maybe 3, continued from last evening in an effort to institute stewardship of our national forests, the public's lands in our country.

Last night, we lost an amendment by a close vote to try to reduce the subsidy to private timber companies for logging in the Nation's forests; again, our public lands, owned by all of us American citizens.

But that battle will continue because it should be won, it must be won, and ultimately it will be won.

This amendment this morning has become imperative if the American people are to reclaim some rights that they have held for 85 years—since 1907—the right to appeal a timber sale decision of the Forest Service. I guess, to put it another way, a basic not only American right but democratic right with a small "d," and that is to appeal a decision of a free Government of a free people if that decision adversely affects an individual citizen.

As I mentioned, for more than 85 years, the public has had an opportunity to appeal timber sale decisions of the Forest Service. Again, these are decisions governing the disposition not of private property—no private property—but of our national publicly owned national forests.

Somehow turning facts and logic on their heads, the administration recently took the position that, after more than 95 percent of our forests have been cut, the public appeals process in place since 1907 somehow now is blocking progress. An appeals process—again, a chance for a citizen affected to be heard, that stops less than one out of every seven sales of public forest lands—evidently is just too much for some to bear.

So this amendment, Mr. President, becomes necessary because it will establish a systematic channel for public participation, both during the front-end comment period, as it is called—that is prior to announcement of the decisions—as well as maintaining an appeal system of review.

A brief, and I do mean brief, historical recap is important to understand what will transpire unless we act.

The U.S. Forest Service has promulgated new regulations set to go into effect at any moment that would ban the public's right to appeal specific project level decisions—ban. You, the citizens of the United States, shall have nothing to say about the disposition of your lands. It is saying, in effect: These are not the people's forests; these are forests that we, the unelected Government, are going to decide how they are used.

It is no secret that the regulations were insisted upon by the Vice President's Council on Competitiveness, despite clear opposition of the senior level management staff within the Forest Service. And that needs to be emphasized.

An internal study led by Region 4 Deputy Regional Forester Mr. Bob Joslin, recommended that certain changes could be made but that the appeals process must be maintained.

When the Chief of the Forest Service, Mr. Robertson, came before our Subcommittee on Conservation and Forestry, he did his best to try to defend the indefensible, but he also failed to say a word about the recommendations of his own people, the senior level staff of the Forest Service.

Afterwards, we have had many thousands of letters, literally, of protest received by the Forest Service, not only from the general public but from Members of Congress, including the chairman of the Senate Agriculture Committee, the Senator from Vermont [Mr. LEAHY] and strong protests from the Speaker of the House, Mr. FOLEY. Yet, as the Senate tries to be responsive to the requirements of a free people, the administration is stonewalling us as we seek pertinent information at this time of decision.

And it does this, Mr. President, as part of an effort to get away with regulatory rulemaking designed to cut the American people out of the decisionmaking process of their own forests—their own land.

It astonishes me that there is even a need to discuss this matter here today. The Founding Fathers developed our Nation's principles of democracy. We have always taken great pride in the individual rights of our citizens including the right to dissent and object to decisions of the Federal Government. However, the current plans are designed to systematically shut the American people out of the decisionmaking process. It is not right. It is not right. Unfortunately, it is true.

I used to have an old friend that called me up with something outrageous to get my reaction. And I would say, "My goodness, Helen, that could not be right." She would say, "It is not right, but it is true."

This is not right. It will not stand.

I made a lot of predictions that I have been wrong about in my public life, and in my private life, but I can tell you, regardless of what happens to this amendment, whether it is won here today, or won tomorrow, or won in the Supreme Court of the land, you cannot abrogate the right of an individual citizen to participate and dissent in the decisions of his Government. It will not stand.

We will save a lot of time, and a lot of effort, and a lot of cost in court on behalf of the taxpayers of United States of America if we will adopt this amendment this morning, take it over to the Forest Service, give them the clear direction that codifies an American citizen's right to participate in the disposition affecting their lands, and to do it this morning; set this to rest. And I hope we will and I believe we will.

But if we do not, in a whole history of cases going back to sunshine laws, the requirement that public decisions be made in public by elected officials, and the absolute right of a citizen to petition the Government on a decision affecting their property, the joint ownership of ever taxpayer in the United States in the national forests of our country, that will be upheld.

And this effort to cut out all citizen participation on their forests will not stand. I just hope we will reaffirm that right by this amendment this morning.

I want to end by simply saying very softly to all within the sound of my voice, we are not talking about private property. Nothing in this amendment affects any private property. These are public lands. They should be managed through an open public process. The system should not be abused.

I anticipate the Senator from Idaho [Mr. CRAIG], and I might have a discussion on that. He and I agree the system should not be abused. But closing the system the public relies upon is certainly not the answer.

I ask all my colleagues to join me in supporting this amendment that codifies a decision that has been used since 1907 and now the attempt is to end it because of an unwarranted and unwise decision by somebody who does not understand either constitutional history or the constitutional demands of a free people.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Mr. President, I appreciate the statement of the Senator from Georgia. I might tell my colleagues that I know in talking to several people who have very significant timber interests that they have some strong opposition to their amendment.

So this is an amendment on which I expect there will be a rollcall vote in, I hope, the very near future and I hope we will be able to limit debate on this and all amendments. Because as the chairman of the Appropriations Committee mentioned yesterday, as well as the majority leader, we have a lot of work to do if we are going to move to the tax bill. We have to get this bill finished.

I hope those people who are in opposition to the amendment will make their case and make it fairly briefly and at whatever time is appropriate, move to table so we can proceed to additional amendments.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. FOWLER. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, the Senator from Georgia has introduced an amendment in which he argues that the whole issue is the right of participation in decisionmaking, the right of the citizen to be a part of a process that determines human activities on the public lands of this country. Specifically in this issue, the point of discussion is the Forest Service and timber sales.

He has said basically that since 1907, the citizen has had the right to question the decisionmaking process and the implementation of public policy of the Forest Service as it related to its activities and that that was now being denied by the Forest Service and that therefore his amendment would reinstate what is a basic right in this country.

I think all of us recognize the importance of the right of the citizen to participate in a representative republic. We also recognize the responsibility of management and the right to form a public policy that can in fact be implemented.

Time and time again since I have served in this body and the other body, I have heard it said that we ought not micromanage; that we really ought not be involved in the day-to-day detailing of the processes of the agencies of our Government. We ought to set the broad policy, better known as public policy. We ought to oversight it and watch it closely to make sure it meets that which we believe our citizens want it to meet, but we ought not be involved in the day-to-day minute kind of decisionmaking that I would suggest the amendment of the Senator from Georgia is exactly trying to do.

The Forest Service has long maintained an administrative appeals process to allow the public to raise any question and all concerns as to the agency's decisions. This process has never been legislated. It has developed at the discretion of the Forest Service. The process has changed over the years.

Most recently, there was a change in 1989 in an effort to streamline what had become a complex, time-consuming, and expensive process. But the 1989 rule, the change, did not accomplish nor did it stop something that has been going on for the last good number of years that has accelerated in the last few years because some interest groups have found that they can use the process to block action: that they can tie the Forest Service up in the Federal courts of this country in such a way that no action goes forward at all; that, in essence, they are creating a de facto stoppage, disallowing the Forest Service to make decisions within the confines of the public policies and the rules and regulations that they must live with. And that process has become an extremely costly dilemma, a dilemma that largely, I believe, has been answered in a variety of other ways.

The Senator from Georgia suggested that in 1907 this process began. That is true. And at that time I think if he and I had been here we would probably have argued for it because, up until then largely the citizens of this country had been cut out of being allowed to overview, to react to, and to question decisionmaking at the policy level.

That changed. It first changed in 1969 with the passage of the National Environmental Policy Act. We call it NEPA. And then again in 1974 this Senate, this Congress said citizens ought to have a greater level of participation in the decisionmaking, and we granted that, and we allowed a public process and a comment and a questioning process to go forward. That is on the books today—1974, Resource Planning Act; 1976, National Forest Management Act.

All of those greater enfranchised the right of the average citizen of this country to have a larger say in the process of creating the broad policy, the public policy under which our agencies are managed. I support that. I think my colleague from Georgia supports that. We recognize the importance, as we craft the process, for the maximum public input.

But once it is done, should we on a day-to-day, hour-to-hour basis say that the average citizen has the right to step into the process and say, no, you are doing that wrong? Even if they hold no expertise in the area of forest management, hydrology, soil science, wildlife management, habitat concerns—even if they have expertise in none of those, they in the process today have a right to say "stop it," and a stamp and an envelope and a form forces the Forest Service in this process to back off in a very costly way and say we will have to take a look at it.

Since 1984, the number of these kinds of appeals filed annually against timber sales has jumped from 133 to a high of 1,154. That is more than a 670-percent increase.

At the same time, we have seen all kinds of other accelerations in this process. Appellants have increasingly, in my opinion, taken advantage of the fact that appeals significantly delay, as I mentioned, the Forest Service management activities, regardless of the merit of the appeals.

Now, when I say regardless of the merit of the appeals, what kind of merit do these appeals have?

In 1990, only 9 percent of them had merit. The rest of them were thrown out. But it took millions of dollars and thousands of person hours for that to be achieved. In other words, in 1990, 91 percent of the time, the Forest Service was right in following the law and the rules and regulations.

In 1991, they were right—they, the Forest Service—were right 94 percent of the time. In other words, only 6 percent of the appeals were upheld and, in those appeals being upheld, really what happened was the court coming back in and saying you have to make some adjustments. You may be a little off here, or a little off there. You have to change recalculations, do those kinds of things.

What I am saying is that on the average, in the last several years, over 90 percent of the time the Forest Service was right in what they were doing. But, as I mentioned, millions of dollars and thousands upon thousands of person hours were involved in this whole process.

What else has happened? I will suggest that the trend continued from 1991 with 636 new timber sales appealed, or 16 percent of the 3,859 commercial product sales involved has created a situation where, as we would say in a forest industry vernacular, has resulted in no trees being in the pipeline. In other words, that 3-year future look that the men and women who work in the forest products industry of this country need to have for job security is no longer there, largely because certain interest groups in this country, as I have mentioned, have used this appeals process as an opportunity to block, delay, or otherwise destroy the public policy that this Congress, in large part, has said historically is the right policy for the Forest Service to be following.

Most appeals are now found without merit. Some would argue that is fine; that is the way it ought to be. The finding goes forward. The Forest Service took, as I said, 152 years of staff time in 1991 and $5.8 million. Some would say that is OK, that is really the cost of a public process, that is really the cost of a representative republic. I will tell you that is only part of the cost. That is the public cost. That is the taxpayer dollar cost. What is not calculated here are the thousands of men and women who are not working today because there are no logs in the mill yard or on the head rig to be sawed when they could be, under the law that we have established, if it were not for the improper use of this process.

Those are really the issues at hand.

What has happened to address this? The Forest Service recently came forward with proposed changes in the appeals process, moving the appellate or those interested and very concerned, as most are, in the decisions of the Forest Service, to the front end of the process; in other words, to those areas that I talked about earlier—the NEPA process, the National Forest Management Act process—in saying that if you have concern of what we do on the land, you come early to the process, you come and state your concerns, and you help craft the policy that ultimately becomes the activities that are ongoing on the ground; and that once that occurs, once there is a clear direction as to where we ought to go, you no longer have the right to step in at the very, very last minute and, with the appeal, block it. You do have the right to take it to court, as every citizen must have in this country, but you will have to make a much more difficult decision.

First of all, you will have to do your homework more. You have to be really much more concerned that what you say is right and your figures are accurate and the Forest Service in their decisionmaking is wrong if you plan to take it to court, because you are going to have to hire an attorney and you are going to have to spend a little money. The 29-cent stamp that has stopped the process and cost the taxpayers and working men and women of this country millions and millions of dollars no longer is going to work for you.

That is really the issue at hand. It cannot be said that the public has been denied the process, but what can be said is that they have to become involved much earlier in the game and that, if they lose, then they must calculate whether to carry it forward into the courts is worth the fight.

I think those are valid arguments and those arguments are now being placed in regulation.

When those ideas that I have just spoken of were submitted to the public at large, again the public process, thousands of people responded by saying the U.S. Forest Service is right, decisions have to be changed. In almost a 3-to-1 outpouring of cards and letters and petitions, the public of this country, once again involved in the decisionmaking to change the appeals process, said that it ought to be changed and that the Forest Service is on the right track in changing it.

The majority of those who wrote in would disagree with the Senator from Georgia. They have said, yes, we will get involved up front early on and, in doing so, we will take our luck there and if we lose and our case is strong enough, we will take it to court, like we do in almost every other process that involves Government, the citizens, and the processes of Government in public policy.

Those are really the issues at hand here. It is not a matter of stepping back. It is a matter of saying that what we did in 1969 with NEPA and what we did in 1970, in 1974, with the Resource Planning Act, and what we did in 1976 was right; that we did engage the public, we do allow them to be part of a decisionmaking process that forms public policy. But what we should have done at that time was change the appeals process because the old 1907 standard really was no longer applicable unless you do believe in micromanagement, unless you do believe that the average citizen really ought to have the right to come on a timber sale and say what trees ought or ought not be cut or how the road ought to lie or what kind of gravel ought to be put on that road, that a hydrologist may not have been accurate in assisting the surveyor in laying out the proper grade for the road so that the erosion is less that it might otherwise be.

Those are the kinds of decisions that we are talking about that really is the fundamental issue at hand. That is why this amendment goes directly against the reasonable and responsible management of our public lands based on public policy, based on a timely process, and stopping that juggernaut that has occurred as a result of the inability of the Forest Service to manage, based upon appeal after appeal after appeal.

Are there frivolous appeals? Are there less than serious citizens who buy the 29-cent stamp and fill the envelope with a form? Yes, there are. I would like to think there are not many, but, yes, there were college kids in the East who were told to stop timber sales in the West. They had never been there. They had no idea what was in mind, but organizations said it was the right thing to do because cutting trees was bad. But living in stick-built homes is not bad. Having affordable housing is not bad. Just cutting trees that build the affordable homes is bad and you ought to stop it and, in instances, that very kind of thing that I just explained has happened.

Did it cost the college student anything? No, probably did not; probably made he or she who participated in it feel pretty good. But it cost the working men and women who were going to saw that log at the mill or fall it in the woods their jobs. In some instances, it cost the mill operator his or her business in foreclosures and in bankruptcies.

What we must have is an orderly, predictable process that all involved can understand, from the public participating to those who are employed in the industry who are the subject of the issue, and affordable, predictable economy and job market. Those are the issues at hand.

The Senator from Georgia is right, the process needs to be changed. There are problems in it. The Forest Service agrees, and they have proposed a change that I agree with, in large part; that I believe will, in fact, streamline the process.

But what I think the Senator from Georgia is doing with his amendment is stepping back into the dark ages again, into that time of juggernaut that has been going on out there in saying that you do not have to, as a citizen, become involved early on; you can wait until after all the work is done and, if you just do not like it, you can stop the process.

That is not fair, number one, and it is not the way our country has operated historically, in an orderly and responsible way, as a representative Republic. So I must strongly stand in opposition to this amendment and would encourage my colleagues to oppose it as we vote on it.

Mr. FOWLER. Mr. President, may I ask, may I be allowed to make a few points in response to my friend from Idaho? I will not take more than 2 minutes.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. FOWLER. I ask unanimous consent that it not be counted as a second speech.

The PRESIDING OFFICER. Is there objection? The Senator from Georgia has the floor for 2 minutes.

Mr. FOWLER. Mr. President, let me just say in brief response to my friend from Idaho that I acknowledge what he emphasized. First of all, that there are many frivolous appeals that are filed. But I also want the RECORD to state very clearly what my friends and colleagues know, that under the present law the Forest Service not only has the authority but is required to dismiss frivolous appeals.

That authority is under 36 CFR section 217.11 and requires the Forest Service to dismiss without a decision on the merits any appeal which is not supported by current law or facts. So there is no problem on the frivolous appeals.

When my friend from Idaho says this is costing the Government millions and millions of dollars, it may cost it thousands and thousands of dollars but nothing compared to the $300 million in subsidies in this bill to the private timber companies that are being subsidized by the taxpayers for these timber sales.

That would be like saying: Well, if you have a problem with your Social Security, even though that is the law, do not call. We do not want to waste the time of the Social Security Administration. You cannot call down there and check whether or not the law is being followed.

If you are a veteran and have a problem with your veterans benefits: Oh, do not call the Veterans' Administration. You do not have any right to appeal the decision of the Veterans' Administration, even though you served in the First and Second World Wars. That is going to cost a bureaucrat some money to uphold the law for an American taxpaying citizen.

So I say, with all respect to my friend from Idaho, this is not a bureaucratic comfort act. This is an appeals process that an American citizen has a right, if they feel—not frivolously—that their public lands are being misused.

I thank the Senator from Idaho, and I thank the Senator from Montana.

Mr. BURNS addressed the Chair.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BURNS. Mr. President, it seems as if every year these types of amendments come up on this particular piece of legislation. I want to address the change in the appeals process, which did not bar anybody from filing an appeal or being involved in the process, the process and the appeals system, and it has worked for those people who have questions on management problems, but also it has worked from the standpoint of people who make their living on public lands, who are in the logging business or the grazing business, because they, too, sometimes feel that the management practice has been askew and they, too, appeal.

So it works for both sides of the spectrum when it comes to public lands use.

What the Forest Service basically wanted to do is whenever the forest plans are considered—and they are reconsidered every 10 years, and there is a reason for that—they want to get as much public involvement and public input on the front end of the planning session.

Now, I do not know how many folks who will cast a vote today have tried to manage a farm or a ranch or a tree farm, or whatever, and tried to make a living at it. But we know that in order to harvest whatever we want to grow, the plans on that crop were not made the spring it was planted, or the fall, in the case of winter wheat, when it was planted. Those plans were made 4 and 5 years in advance because of rotation of crops, because of what Mother Nature throws at you in the way of drought, flood, the elements, whatever it is. You always make plans in this business of trying to make a living from a renewable resource.

So what we wanted to do is manage these lands and manage the people who harvest this product, this renewable resource that grows back, so that they can make plans along with everybody else in the whole system. It is a planning process, just like you do in your garden or on your farm or on your ranch, or anything that you do. Even in a business that has nothing to do with a renewable resource, you have a 5-year plan, you have a 10-year plan;

you set goals. And you are going to have to do certain things to attain those goals.

When you deal with Mother Earth and with a renewable resource, there are always certain variables that are thrown in, and sometimes we have to change our plans due to elements or existing conditions, or conditions that we had not planned on, because I know everybody who makes plans, when you are growing a renewable resource, sometimes they do not always pan out.

The American people have come to expect full grocery stores. American agriculture has done a pretty good job of providing that. I want to remind my fellow Americans and my colleagues in this body that wheat is only $3 a bushel. In 1945, it was $3 a bushel. A combine, back in those days, cost about $8,000; today it costs $110,000. And you are still asking agriculture to do it for less, because you think you are paying too much for food.

Sometimes that has to be adjusted, too. But I do not see anybody running out there into agriculture and saying: We are going to give you more for your product. But he, too, has to go through this planning process.

So the basic premise of the change in the appeals, as far as the Forest Service is concerned, is let us get the majority of the public input up front: What should be cut, how it will be cut, how it is to be reforested or replanted. But let us get that planning process of the 10 years up front, so that the mills can make plans, so that we can make plans, and then let us get on with the plan.

Now, if it has to be changed, then that is what I always recommended. If is it not working, then it is also in the law for the Forest Service to amend the forest plans to fit the existing conditions.

Now, this amendment does one of two things: Increase cost.

I was confronted with a question on why western Senators get all excited when these kinds of issues come up; yes, it may be grazing fees. We are going to talk about that in a little bit.

I can remember in Montana when 30 BLM employees managed all the land out there and did it very well. They used advisory boards and this type of thing. They did it very well with 30 people in the whole State of Montana. They managed those lands. Now they have over 400. They are saying, "OK, increase in fees. Do I get more bureaucrats?" Because I cannot go down my own road anymore without somebody driving a government jeep with a government plate on it. One of them the other day said, "Cattle free by '93."

So basically, that was the reason, to get more people up front in the planning process so that we can get on with managing our public lands.

You would say, well, it costs the taxpayer. The taxpayer says, "I am willing to pay a little more maybe in these appeals costs to answer some of those appeals because it is my land. I would like to see it managed right. I am willing."

You talk about $5.5–$6 million direct expense or whatever it is to the taxpayer. They say, "My part of that, out of 240 million people, is not very much. I am willing to pay that."

Are you willing for your kids to pay if it is going to cost your children and grandchildren $4,000 to $8,000 more just in construction costs alone to build a home? Because the ramifications are that that is just the first pebble in the pool. Then the waves go out. It costs us every time we turn around.

So what this amendment does is it exacerbates the problem, yes, that I think Senator FOWLER, from Georgia, is trying to get around. It only increased it. And if this amendment is adopted, within 3 years every national forest in this country will be a so-called below-cost operation because of all of those costs that it takes to address appeals goes in on the cost of operating on that forest.

Then they say, well, you need some money to build some roads. They say, not for below-cost timber sales. This just adds to the overhead. Somebody has to pay it. That cost accounting has to go somewhere. So that cost goes against the actual sale of that timber on public lands.

I agree with the Senator from Georgia that maybe our thrust should be in regeneration and doing some things to our forestlands like in regeneration, like in watersheds and really putting the money where our mouth is. If we want to do that, let us put some money over there and do it or let us get the old Conservation Corps and get into the regeneration and redevelopment on some of the lands that have been abused. I am not saying there are not some around. There have been. Let us put our thrust there.

Mr. FOWLER. Will the Senator yield?

Mr. BURNS. I sure will.

Mr. FOWLER. I want to make sure my friend from Montana is aware that the administrative procedure recommended in my amendment is one that came from the Forest Service itself and the Office of Technology in its long awaited study on Forest Service planning that was released in March of this year. I will quote one paragraph:

> The * * * appeals process has been a valuable tool for the Forest Service. It has provided an internal mechanism for clarifying the legal requirements and testing the soundness of the decisions and the appropriateness of current policies and procedures. In addition, the appeals process can lead to better, more consistent decisions by encouraging more responsibility and accountability on the part of the presiding officers. The available evidence does not support the assertion that administrative appeals have significantly decreased the volume of timber available for sale.

That is the OTA study just released in March.

So, I simply say, since both the Senator and I are trying to accomplish the same goal, that this administrative appeals process that some are attempting to repeal has won nothing but kudos and credit from the studies of our Government, and the conclusions do not support any assertion that it would significantly or has or will significantly decrease the volume of timber available for sale.

I thank the Senator for yielding.

Mr. DOMENICI. Will the Senator yield?

Mr. BURNS. Yes.

Mr. DOMENICI. I would like to ask the Senator from Georgia a question. Did he not mean that the appeals process is being repealed? He meant to say one of a number of administrative appeals processes is being repealed, did he not?.

Mr. FOWLER. That is correct.

Mr. DOMENICI. There are still two total administrative appeals opportunities left in the law, are there not?

Mr. FOWLER. The Senator from Georgia is aware of the comprehensive appeals process that the Senator from Idaho and I had a discussion a little earlier about, the different acts over the years that have been either added or subtracted in the appeals process.

What the Forest Service is attempting to do now is to not allow a citizen the right of appeal in the predecisional, what they call the scoping analysis, when the actual decision about the sale is being made. That right has been in the process since 1907. This amendment would seek to codify the remaining law.

Mr. DOMENICI. Mr. President, I do not believe that is right. We will talk about it when we have our turn.

Mr. FOWLER. I know what my amendment says.

Mr. BURNS. I thank both Senators for clarifying that. I do not read it the same way either. I think basically what they are trying to do—I will take a look, and I advise my good friend from Georgia to take a look and see what they are trying to do. It is my impression that they want more input on the front end of this thing in the scoping and the setting of the forest plans and then, after that, there is still an appeals process should conditions arise to change the management program. That mechanism is not being taken out of the process. It is just not being taken out of it.

The point is that we want more input on the front end so that in the next 10 years we can operate in a little bit of peace so you do not have micromanagement and frivolous appeals, so we can get on with living. But as it is now—and anybody that would try to contradict the fact that it does not cost money absolutely has bad information.

Under this amendment, the cost and cost analysis and the cost in time and

the business of getting on with trying to manage a renewable resource, that cost of American time, money, and, yes, it has a social and economic impact on those communities and those people who live in the West and are subject to the whims of sometimes little fiefdoms of a government bureaucracy.

They wonder why they are all upset with government as it exists today. For the first time in the 200-year history of this Government we are not getting all that we are paying for, and I think people are a little upset about that. I did not see very many Government employees. Now I cannot even drive home that I am not surrounded by them. Most of them were on the 14th Street Bridge this morning. I like to have never gotten to work. I could not appeal that.

But that is what the Forest Service is trying to do. They are trying to bring some sanity in the land management. It is like you run your farm or your ranch or even your garden or even your flower bed. You make those plans for a long time because we are in a growing cycle. You cannot change in the middle of a stream. You cannot change from 1 month to the next, not in dealing with nature, soil, water, and sunshine that it takes to produce this terrifically economical product that keeps the majority of Americans out of the cold and, yes, out of the heat.

So America is asking us to be more efficient, and we can be. We can provide food and fiber and housing for this country, if allowed to do so in a constructive way. That is basically what we want to do—get the public involvement on the front end of the planning process. You can appeal those. Let us get them up there, because when those plans are put into effect, it is going to be tougher to change those plans, unless we have a real national crisis.

Mr. FOWLER. If the Senator will yield, my friend from New Mexico has left the floor. A citizen can still appeal the master plan, but that is once every 10 years. What the citizen has had a right to do is to appeal the project level decisions. This is what is being taken away and what I attempt to restore. Timber companies can continue to appeal any denial of their permits. It is simply the citizen that cannot now, unless we pass this amendment, appeal a project level decision on a sale approved by the Forest Service.

Mr. BURNS. I advise my friend that they can still appeal project level. The problem is they cannot be frivolous.

Mr. FOWLER. Again, I say to my friend—and I will show it to him in the language—that under the proposed decision being promulgated by the Forest Service, a citizen will not be able to appeal a project level decision.

They have been able to do it for 85 years. But unless we pass this amendment, and they go through with what they have promulgated, that right will be taken away. That is the only reason I am here. So I would like at this point to remind my friend from Montana—and he is my friend—we have had hearings on national land issues together in his State, and I want to show him the editorial from the Bozeman, MT, Daily Chronicle entitled, "Unappealing Proposal;" an editorial from the Missoulian, of Missoula, MT, entitled "Interfere To Enforce; Forest Service Seems To Manage Better When the Public Meddles In"; an editorial entitled, "Not Above the Law," again from the Missoulian in Montana, all of which support the position of the Senator from Georgia.

Mr. President, I ask unanimous consent to have these articles printed in the RECORD at this point.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

NOT ABOVE THE LAW

Secretary of Agriculture Ed Madigan went to Congress more or less to argue the U.S. Forest Service should not be held accountable for its actions.

Madigan pleaded for congressional restrictions on environmental lawsuits, which he said are interfering with the Forest Service's ability to do its job—specifically with its attempts to both produce timber and protect northern spotted owls in the Northwest.

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So long as the Forest Service abides by federal laws and follows its own rules and regulations, it has nothing to fear from the courts.—MISSOULIAN.

[From the Missoulian, Aug. 11, 1991]

"INTERFERE" TO ENFORCE FOREST SERVICE SEEMS TO MANAGE BETTER WHEN THE PUBLIC MEDDLES IN

Secretary of Agriculture Ed Madigan last week went to Congress more or less to argue the U.S. Forest Service should not be held accountable for its actions.

Madigan pleaded for congressional restrictions on environmental lawsuits, which he said are interfering with the Forest Service's ability to do its job—specifically with its attempts to both produce timber and protect northern spotted owls in the Northwest.

"We could manage this issue better if we were free from the interference of the federal courts," Madigan said.

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Millions of owners of the national forests—citizens—routinely disagree with the assertion that the Forest Service knows best. That's why the agency occasionally finds itself in court. In fact, had the Forest Service properly managed forests in Washington and Oregon, it's altogether likely the spotted owl would not have been pushed to the brink of extinction, qualifying the bird for the endangered species list. The Forest Service is required by numerous laws to manage its lands in a responsible, sustainable manner that fairly balances the many uses of the public forests.

So long as the Forest Service abides by federal laws and follows its own rules and regulations, it has nothing to fear from the courts. But if Congress grants the Forest Service immunity, then the public will lose its ability to keep the agency and its employees honest. Heaven help us the day Congress declares law enforcement "interference."

[From the Bozeman (MT) Daily Chronicle, Nov. 26, 1991]

UNAPPEALING PROPOSAL

Appeals of U.S. Forest Service timber sales have hamstrung the agency in its quest to supply the lumber industry in recent years. Their cause, however, seems to have evaded many in Congress, where a proposal to eliminate or overhaul the appeals process was debated last week.

Timber sale appeals were rare when forests stretched uninterrupted from horizon to horizon. They don't anymore.

The Forest Service—at the direction of Congress—tapped public forest lands heavily following World War II, when an economically growing and fertile nation demanded a lot of affordable housing.

At the time, the consequences of these large timber harvests were obscure or invisible to those who demanded, directed or implemented them. Now these excesses are at center stage. Those not convinced of this need only take a short airplane ride over Montana's forest lands. Untrammeled reaches of forest that were once the stockpile of a lumber-hungry nation are scant. The slow-growing coniferous forests of the West have been unable to fill the void left by post-war timber harvests.

The immigration of millions to the West—many of whom came specifically to take advantage of the lifestyle offered by national forests—ensures that virtually every planned timber harvest is now in someone's backyard. If the sale is not tempered by concern for its consequences, that "someone" is going to object, whether through the appeals process or through litigation in federal courts.

While it's true the growing conservation movement is the source of many of the appeals that have hindered forest officials in their quest to supply the timber industry, the success of these appeals speaks for itself. They stand as evidence that many planned timber sales violate the intent of environmental law designed to prevent permanent or massive damage to a public resource.

Throwing out the appeals process—a move advocated by the Forest Service chief and some members of Congress—is like giving aspirin to a terminally ill patient. The appeals, no matter how frustrating they are to forest managers, are only a symptom of the disease.

The best treatment lies in a realistic timber quotas and a transformation in the manner in which timber sales are prepared.

The result may be a scaled down timber sale program, but that's the best prognosis the timber industry can hope for given the limitations of our national forest resources.

Mr. FOWLER. So I just ask my friend: There are some areas of the Forest Service procedures and management that we disagree on, and I certainly agree to disagree with the Senator on that. But on this question of citizen involvement, it seems to me that the people who have studied the proposal of the Forest Service do agree that this is not in the best interests of our timbering, or our national lands. I ask consideration of that.

Mr. BURNS. I thank my friend from Georgia. We have worked on many issues together. I guess we just interpret that law from a different point of view.

I advise my friend that we would hate to start running this country by what editorials we see, and I will try to make my own judgments on that, being as I am here and they are not. Nonetheless, we have not taken the public out of the process. That is the point I am making. We are trying to bring some sanity to management and to manage those lands. That is like us going out and trying to say to a farmer or rancher: You have to change your whole plan here in midstream. We never would get anything grown, or in the ground, and we never would get anything in the bin, if that is allowed to happen.

I am always reminded that it is pretty tough to manage by committee. That is basically what we are trying to do here. And you have to look at the poor old camel; the camel was put together by a committee.

So I ask my colleagues to oppose this amendment. It is meant to be just another roadblock as far as trying to manage public lands and trying to deal with the renewable resource in environmentally safe ways. I thank the chairman and yield the floor.

Mr. BYRD. I wonder if we can get a time agreement on this amendment. We have been on it 1 hour, or it will soon be within a couple of minutes.

Mr. STEVENS. Will the Senator yield?

Mr. BYRD. Momentarily. We have to move on these amendments. I have 20 on the list here that were accorded eligibility by the Senator yesterday, and I just hope we will not take too much time to debate these amendments. Let the Senate work its will one way or the other. The distinguished Senator from Georgia is agreeable to a time limitation. I just hope we can move on.

Mr. STEVENS. Mr. President, I see this as another example of a Senator that serves on a legislative committee bringing an amendment to the floor and using the urgency of passing the appropriations bill to avoid the normal amendment process to deal with this legislation. I am not prepared to enter into a time agreement yet on this. I would enter into a time agreement with regard to tabling this motion. But if it is not tabled, a series of us have amendments to offer to it.

Let me explain to you why. Twenty percent of the timber harvested in this country comes from the public lands of the United States. As a young man, I studied the record at Gifford Pinchot. I became very impressed with them. As a matter of fact, I had the privilege of meeting with Pinky Gutermut, and I am sure my friend from West Virginia remembers him, one of the distinguished environmentalists of the early 1950's. We talked at length about the reason for establishing the national forest. The basic reason was that there would be a yardstick by which the public could measure the performance on private lands.

Is it not strange that this amendment is brought to us by a Senator who represents a State that has only one company that deals with public lands and that happens to deal in my State. Basically, the timber that is affected by this is in the West. The 80 percent is not affected at all.

There is no appeal process for citizen involvement in cutting timber on private lands, although as I travel throughout the United States, I hear more complaints from people who live adjacent to the private lands subject to indiscriminate harvests and waste, than I do from those who live adjacent to public lands, because we do have the Forest Service protection for citizen involvement.

My citizens are very much involved, as the Senator from Georgia knows, in what goes on in the two great national forests in my State. As a matter of fact, I tried to create additional national forests in my State, and I think it may be possible sometime to do so, because we believe in the system that is there.

Here we have a series of regulations that were issued, promulgated, not effective yet, to streamline the appeals process for efficiency and management of the Federal lands that are in the national forest. What happens? People who represent the private sector forests are trying to put another period of delay on the harvesting of timber from Federal lands, from public lands.

They do not have to go to the EPA. They do not have to go to the Forest Service. They do not have a review first, before they harvest timber for fish and wildlife. They do not have a citizen's right to appeal from decisions made by the owners of private lands as to whether they harvest timber or not, what the cycle is, whether they have clearcutting, or protection for endangered species. Take the redhead woodpecker, the one that is so much in the news now. There is no protection in the southeastern portion of the United States for that endangered species. And we all know what the difference in terms of the spotted owl is in the Pacific Northwest.

(Mr. BRYAN assumed the chair.)

Mr. STEVENS. Mr. President, it is high time we brought back the focus of Gifford Pinchot in terms of what is the yardstick. I have an amendment being drafted now, and if this amendment is not tabled we shall debate it. It is that under the interstate commerce clause there will extend to all private lands that are subject to harvesting the appeals process that is in the Senator's amendment, the EPA process, the endangered species process, the advanced planning process that is required for harvesting timber from public lands, the total review that is involved in utilization of public timber. The yardstick has been shortened.

The Senator from Georgia talks about the subsidy in the harvesting of timber from the public sector. There is no subsidy, because the cost factor to have to comply with the laws that are already on the books dealing with the harvesting of timber from the public lands is so great that there is no way to have an honest comparison in terms of the costs compared to the private sector land.

The Gifford Pinchot dream has been lost because of the heavy weight of regulation that comes on year after year after year on the Forest Service timber as opposed to the total lack of any regulation of the private sector.

I happen to represent a State that also has private lands and I have seen some of those lands clear cut. I have seen some of the practices on those lands and they are not what they are on the Forest Service lands, and we are now learning in the State of Alaska what it means to have timber in private lands without any right of the public to be involved in the harvesting of those lands.

If the Senator from Georgia now wishes to say that this series of regulations that were promulgated to make the appeals process for the Forest Service on public timber more efficient and more effective and still preserve at least two full rounds of appeals for the public is not sufficient, I think at least we ought to put at least that much on the private sector now with the Senator's amendment. I think it is time for us to look at the 80 percent and take the public glare off of the 20 percent which is already overregulated.

And the economic effect of what the Senator from Georgia is trying to do to our Pacific Northwest States is staggering. It is absolutely staggering. It is putting more people out of work every day. And where are those jobs going? What is the price of timber now in Georgia? What is the economic advantage to Georgia over what the Senator from Georgia is trying to do to the Pacific Northwest in particular?

I intend to go into that in length. And I say with due respect to my friend from West Virginia, the distinguished President pro tempore, this is just another example of why we have rule XVI. This is legislation on an appropriations bill. We have no chance to debate it. We have no chance to offer substitutes. We have no chance to offer substantive amendments, because we are told: Let us hurry on with this bill.

This bill is about money to operate the Forest Service. It is not about a legislative amendment. And this is legislation on an appropriations bill, clearly.

But this Senator is going to exercise his rights to offer amendments to that legislative proposal. And I have a series of them, Mr. President, not just one. I have a series of them, because it is time we stopped this legislation in a permanent fashion on appropriations bills.

If the Senator from Georgia wants to legislate on this bill then I want to amend that legislation. And my people demand that it be amended, because it is time we looked at the 80 percent of the timber that is harvested in this country. That 80 percent is not subject to these regulations. That 80 percent does not have the protection for the Endangered Species Act. That 80 percent does not have a plan that must be filed before you even contemplate harvesting.

I am going to present to the Senate this afternoon the number of permits that are required to harvest one stick of timber from the national forests in Alaska. And I compare it to the permit required to harvesting a stick of timber in Georgia, and let the Senate draw its conclusions.

Are we complaining about this amendment, because it is overregulation? No. We have gone through a whole series of hearings with the Forest Service on this new appeals process. Many of our people did not like it in the beginning. We had hearings. We had public comments and they are not about ready to go into effect.

The Senator from Georgia wants the Senate to go on record now and change that. He could have gone to the appeal process as we did. He could have notified his constituents to go to the appeal process and be heard. But, no, he is going to bring it here, he is going to promulgate the regulations for the Forest Service here on the floor of the Senate. They are going to be permanent regulations; they are going to be in law. They will not be amendable by the Forest Service. It will not be effective until approved by the House of Representatives.

But I will tell you this, Mr. President, they are not going to be effected until the amendments of the Senator from Alaska are considered also, because this is legislation, and if the Senator from Georgia wants to bring it up as a member of the Energy Committee, he should do that. He should bring a bill to the floor and he should try to change the law that deals with national forests. There is a basic change of law of the national forests. It is not proper to put us in the position that we are in.

If the Senator wanted to bring that, he could bring it out of the Energy Committee. I could have something to say about the scheduling of it. I could object to the scheduling of it. I could object to the motion to bring it before the Senate.

This bill is before the Senate as an appropriations bill. It is not before the Senate as a litigation bill. It is this means of coming to the floor with these amendments that evades the provisions we built into the rules so that small States and States that are vitally affected by amendments such as this have an opportunity to be heard and what is more have an opportunity to contact their people who are 5,000 miles away to see how they feel about this.

I say, and I had this statement yesterday, to my good friend from West Virginia, this is legislation. Why should we have a motion to proceed with this legislation? Why should we not have a consent for first and second reading of this legislation? Why should we not have an opportunity to offer amendments to it? Why should we not have an opportunity to really express our opinions at length without regard to the time limitations that should apply to appropriations bills? I believe in those time limitations.

And I would very much like to comply at this time with my good friend from West Virginia's request. I cannot, because I cannot see why we should spend our time legislating on an appropriations bill about the 20 percent of the timber of this country that comes from Western public land States and ignore the abuses, the substantial abuses that are taking place on private lands throughout the country in the harvesting of timber.

That is not welcome news to my friends from the Forestry Association, I tell you that, but it is time for us to do it. And if the Senator from Georgia wants to legislate about public lands on an appropriations bill and I am going to try to do it today.

Mr. DOMENICI. Mr. President, will the Senator yield for a question?

Mr. STEVENS. I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico is recognized.

Mr. DOMENICI. Mr. President, I heard the word "abuses" used here frequently, and since I think we have some people interested in deciding how to vote who are not necessarily affected by abuses, I would just like to share a few things that are happening.

Would you believe that the process that the Forest Service said should be altered is now used in the following manner, I say to my friend from West Virginia? There is a college, Wesleyan College, Middletown, CT. As part of one of their university classes, they suggest to their students that they from Connecticut file appeals in Alaska during the last week of this enormous process. They have not been in that State. They have not filed one piece of paper, but you get a little appeal that comes cranking out of some little classroom where a group of students are showing their teachers that they know how to appeal.

But you know what happens. Just filing that means they have an internal appeal. That causes a 1-year delay on average, because there is such a backlog.

Did we intend that? Did Hubert Humphrey intend that when he came to the floor of the Senate in 1975 just before the 1976 law was passed that said produce a master plan for that forest and get everybody involved in it so that there is citizen input? He came to the floor and said something like this. I do not have the quote but it was in Humphrey's style which none of us can do. Amen, we finally found a way to get everybody involved, get their views heard, and if they are not satisfied to get an appeal. That is what he called it.

But what has happened now is that you do not even have to appeal there. You do not have to complain there. You do not have to participate there as that forest is planned for its uses for the ensuring period of time. You do not have to be there. You can wait until they picked out a sale to do all the work on it, the environmental assessment or impact. You do not even have to participate in that. You can be at the University of Massachusetts—we happen to see one of those in New Mexico—and be a student who is interested in being an activist. And when all that has occurred you can send down from Massachusetts an appeal from that decision. Another year is lost.

Now what they have is the right to go to court at that point under the processes. What the Forest Service is trying to tell us, I think, is help us put some sense into this management. That is what they did with their reforms.

It seems to me that we can talk about the rights to be heard but, Mr. President, the rights to get involved and to be heard and have input have been there since 1976 and have nothing to do with the issue at hand.

What has been created is internal to the Forest Service. They created another appeal and now they say "We made a mistake. Let us leave it like it was originally." You get your input, you have your rights there, you get your standing there when we really do the planning, and then if you do not like the final sale, you can go to court.

I think the Forest Service ought to be left alone on this one. I do not think we ought meddle with it on an appropriations bill.

I yield the floor.

Mr. FOWLER. Will the Senator yield to me?

Mr. DOMENICI. I am finished.

Mr. FOWLER addressed the Chair.

The PRESIDING OFFICER. The Senator from Georgia is recognized.

Mr. FOWLER. Mr. President, if no one else is seeking recognition, I ask unanimous consent to speak.

Mr. DOMENICI. I am informed Senator CRAIG is going to return right quick.

Mr. FOWLER. I will protect Senator CRAIG.

I ask unanimous consent to speak without it being counted as a second speech.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, the Senator is not anticipating a filibuster, is he?

Mr. FOWLER. The Senator is not.

Mr. BYRD. Nobody is going to question his right to speak twice, three, or four times, as long as it is not a filibuster.

Mr. FOWLER. I thank my chairman.

Mr. President, I regret that the Senator from Alaska would not yield to me—and now he has unfortunately left the floor—or the Senator from New Mexico.

I hoped we would not get so much heat and so little light. This proposal that is incorporated in my amendment has been tested by the Forest Service itself. The Forest Service itself implemented a prior public comment period, to be used prior to the annuncement of these project level decision, and maintained an appeals process. They did it, and this is what they found.

This is from the Joslin report, senior level, to the Chief of the Forest Service.

The results have shown the benefits of receiving comment prior to making decisions. Early resolution of conflicting views over the proposed action improved decisions and fewer postdecisional appeals of those decisions.

This is the Forest Service's recommendation. What has happened, the reason we are here today, is not because the Forest Service wants to eliminate citizen appeals. This is a political decision, coming from the Vice President's Council on Competitiveness, eliminating all regulations they can, and from the Secretary of Agriculture, a political decision. This is not the Forest Service.

Mr. CRAIG. Will the Senator yield?

Mr. FOWLER. I will in just a moment. I will be glad to yield, but let me just try to answer the previous two speakers.

I just have to set the record straight here. Both my friend from Alaska and my friend from New Mexico said, well, look, if a citizen has a problem, they do not have the right to come in. They can go to court.

Well, here you have the Secretary of Agriculture actively supporting measures to bar public access to the courts. He said just 2 months ago: "We could manage better if we were free from interference of the Federal courts. We urge Congress to do that expeditiously." End of quote, Secretary of Agriculture, Edward Madigan.

So what we have and what we are trying to address today—I do not want to be here—is to take the politics out and let the Forest Service, as they have done for 85 years, have their citizen review process.

The Senator from New Mexico, how many times have we heard about one classroom filing appeals by fax, probably; they may have faxed it. The Forest Service has the authority to throw out frivolous appeals. That is what they do.

The next speaker, I guess, is going to tell us about the welfare fraud of a lady on food stamps who drove up in a Cadillac. We hear this one great example all the time.

Now, the reason I wanted the Senator from Alaska to be here is because I have the greatest respect for him. I have hiked all over his State, all over the national forests. But I wanted him—he will hear this, he will hear it, and I welcome him back.

I let pass why the Senator from Georgia happens to be doing this or the Senator from South Carolina or all the others that are going to vote for this. We need to be reminded on the floor of the U.S. Senate once again that Alaskans do not own the national forests in Alaska. Every Georgian, every West Virginian, every citizen of Idaho has an equal share, an equal stake in the national lands in Alaska and every other State in the Union.

My vote as a U.S. Senator, as an American Senator first, counts just as much in Alaska and Washington and Idaho as the Senators there. The Senator from Idaho's [Mr. CRAIG] vote counts just as much in Georgia and affects the Chattahoochee National Forest and the Oconee National Forest and every public land and every public decision as does the Senator from Georgia.

Now we must remind ourselves that these are the forests of the people of these United States. They have a right in the sayso of what happens to their public lands, their national heritage, the trust of stewardship to manage those forests right, not only for our generation but for those to come. And that is why we are here today.

The Senator from Alaska talked about 20 percent public lands, public lands being used by private interests. And every citizen of Georgia, Florida, West Virginia, wherever they live, has a right to question those decisions, a right, by the way, under the Constitution of the United States. I say to my friend from Alaska.

Mr. STEVENS. Will the Senator yield?

Mr. FOWLER. I am glad to yield.

Mr. STEVENS. Do you think those same citizens have a right to question what is cut in the State of Georgia from private land?

Mr. FOWLER. The Senator has a right to question any decision and to try to change private property law. All I say to him is, my amendment has nothing to do with private property rights in this country.

Mr. STEVENS. That is this Senator's position. That is exactly why it is wrong.

Mr. FOWLER. That is not what we are debating here today. If the Senator from Alaska wants to curb private property rights by an amendment, then he has an absolute right, and I may agree with him, and I may not agree with him. But it has nothing to do with my amendment.

Mr. STEVENS. Will the Senator yield again?

Mr. FOWLER. I am always glad to yield to my friend.

Mr. STEVENS. My friend from Georgia is talking about the public's right to discuss the cutting of timber, but it only applies to the public lands. It does not apply to the private lands.

I do not want to interfere with private rights. I want to give the public the same rights on private lands to protect the wildlife, to protect endangered species, to see that the view shed is preserved that the Senator from Georgia says we should preserve on public land. I think that is a very fair thing.

Mr. FOWLER. I would be very interested in seeing the Senator's proposal. I might even support it. I do not know. I have never seen it.

But all I am saying is that is not the issue here today. The people of the United States, the people of Georgia, have an interest in private timber holdings in the private timber companies that are using and cutting their public forests in Alaska. The people of Alaska, the private citizens of Alaska, have an interest in the private timber companies in Georgia who are cutting timber on the Oconee National Forest and the Chattahoochee National Forest in my State. And they have an absolute right, either individually or through their U.S. Senator, to question those sales on public lands in Georgia because they are their forests. Alaskans have a stake in their forests.

Mr. STEVENS. Will the Senator yield again?

Mr. FOWLER. I will be glad to.

Mr. STEVENS. My constituents are very interested in that redheaded woodpecker; that is their wildlife. I think we ought to have an amendment

here. That is their wildlife that happens to be in private lands in the State of Georgia, and I am here to represent my people.

So, if the Senator wants to bring a legislative proposal before the Senate on an appropriations bill that deals with regulation of the forests of this Nation, I do not see any reason to set aside just the public lands. Let us talk about the total timber of this country. And I think I am pretty well qualified to talk about that and intend to talk about it at length.

Mr. FOWLER. May I respond to the Senator from Alaska on his time? And this is not—let us leave my part of it. I say this sincerely, and I ask the Senator to seriously examine this. The Senator may have missed this because he temporarily had to leave the floor.

The proposal incorporated in my amendment was one that has been tested by the Forest Service itself and recommended, this public predecisional comment period, to try to solve a lot of these problems and stay out of courts. I regret that, as usual, we get a little loud and extended. I am guilty of that myself.

But this proposal has been tested over the last 2 years in the Forest Service. I believe they would welcome it.

The appeals process on the public lands has only resulted in 5 percent, last year, of the timber target volume that was not met. So we are not talking about, I say with all respect, in my opinion, any massive problem. But I say that on the Senator's time, and I thank him.

Mr. STEVENS. Will the Senator yield? I do not think I have the time, but I would like to respond.

Mr. FOWLER. My colleague has the floor.

The PRESIDING OFFICER. The Senator from Alaska has the floor.

Mr. STEVENS. I would say this. One of the reasons I am here is I read a portion of the Senator's amendment that deals with publishing notice of the action in a newspaper of general circulation that has been identified in the Federal Register as a newspaper under which the notice may be published. That struck me. When a person or company starts cutting timber from private land there is no notice in a paper of general circulation; there is no notice to anyone who might be interested in the redheaded woodpecker, to see whether or not they are going to be harmed by the cutting of timber from private land. This is legislation that ought to apply to them.

I say to the Senator from Georgia, my good friend, who has visited my State, knows my State very well, I think the concepts there are good concepts. If they are to be applied to the public lands, they ought to be applied to private lands.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized.

Mr. BYRD. Will the Senator yield to me?

Mr. NICKLES. I will be happy to yield to the Senator from West Virginia.

Mr. BYRD. Mr. President, I think it has been proved time and again that this—I hope my friend from Alaska can hear me—that this bill attracts more amendments in the committee and on the floor than any other bill. We had 2,800 requests from Senators to the committee, and I think we stopped counting a few days ago, so it was close to 3,000. And last year it would be more than that because we were later marking up the bill. The longer we wait, the more requests we get.

Now, on the floor this bill attracts more legislative amendments, I believe—I cannot be absolutely sure of that, but it seems to me, at least, that this bill attracts more amendments that are legislative in nature than does any other appropriations bill. And we have had an hour and a half, now, on this amendment already today. We have to get on with this bill. Our travail and suffering are not ended here. We still have to go to conference, and every legislative amendment that is on this bill that is controversial here is controversial in conference. So it adds to our worries and our woes.

Now, there have been several Senators here who have spoken out against the amendment of the Senator from Georgia. If they have the votes, why do they not move? He has agreed. He is willing to agree to a time limitation. I can understand why the distinguished Senator from Alaska and others would not agree to a time limitation, because if a motion to table were made and it failed there is no time left to debate on the amendment, and they feel very strongly about the amendment. That is within their rights.

But at least when are you going to move to table? I have told the distinguished Senator from Georgia that I am going to vote against his amendment. But I can tell my friends on the other side of the aisle this debate is not going to continue on and on and on. I now hear there is going to be an amendment offered to the amendment, and certain Senators have talked about points of order and all of these things.

Mr. NICKLES addressed the Chair.

Mr. BYRD. The Senator has the floor. I realize that, but let me finish.

So we are going to go from bad to worse. We are going to get an amendment to the amendment. And if Senators are going to move to table, why do they not move? If they fail to table, they are no worse off than they are now. They still have the amendment in front of them. If they table, then that is the end of it. But if they cannot table, they at least know where the votes are.

So I urge Senators to get on with this amendment because I am just not going to sit here all day and listen to long debates on legislative amendments.

If the motion to table fails, that is the Senate's will. I cannot control that. But I will say one thing. I have told the Senator I am against his amendment. But if there is not some action taken very soon I am going to vote with the Senator.

The Senators over here, they have done about all the talking. One Senator has done the talking on this side. I hear there are other Senators coming to the floor. So, if Senators—this one vote may or may not make much difference. But this is one vote, and my interest is in getting this bill to conference. So I just want to lay it out like that and let Senators know that we have to move faster today than we did yesterday. And Senators cannot just horse around all day and talk and talk and talk.

Of course, if a Senator gets the floor, I cannot move to table. But if they are going to call up amendments to amendments and get other Senators to come to the floor they are going to lose one vote. Maybe they have their votes counted.

Mr. STEVENS. Will the Senator yield just for a misunderstanding?

Mr. BYRD. This Senator has the floor.

The PRESIDING OFFICER. The Senator from Oklahoma retains the floor.

Mr. BYRD. I have finished.

Mr. NICKLES. Mr. President, first, I wish to echo the words and sentiments of the chairman of the Appropriations Committee. He has been very patient. He has shown the patience of Job. He did that yesterday when we had extended debate. But I think we said last night, and we repeated again this morning, we really have too many amendments to go through very extended debate, particularly on legislative items—particularly, as this Senator would feel, on legislative items that have not been considered by the full authorizing committee that are clearly legislative measures that are not germane or pertinent to this bill.

I make this point. Yesterday when we considered the amendment of the Senator from Nevada, and that of the Senator from Arkansas, there was legislation that dealt with mining fees. Senator REID came up with some additional reforms, and Senator BUMPERS had additional reforms. So we debated that—too extensively, in this Senator's opinion. But there is nothing dealing with Forest Service legislation that would stop—or the regulation dealing with appeal regulations. This is clearly legislation on appropriations. I hope it is not agreed to.

I think it is important we vote, I told my colleagues. I understand Senator MURKOWSKI wanted to come over and speak, and I understand Senator CRAIG may have additional amendments or

second-degree amendments. I will tell the chairman we have to pull it down. I am prepared to move to table. I think other Senators may be. But it is important that we move forward on this bill as quickly as possible.

I will make the conclusion of my comments. I have a letter from the administration that strongly opposes Senator FOWLER's amendment. I will mention that the Forest Service is strongly opposed to his amendment. There are over 24,000 comments on these proposed changes. Over two-thirds of those comments were favorable, for the regulations that Senator FOWLER is trying to change.

So I am opposed to his amendment because it is legislation on an appropriations bill. I am also opposed to it on the substance. It would be repealing Forest Service regulations that I do not think this Congress has really studied. That should be done in the authorizing committee, not before the Appropriations Committee.

Mr. CRAIG addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho is recognized.

Mr. CRAIG. Mr. President, I am prepared to move to table at this moment. The Senator from Alaska wants to speak. So I will wait until he has spoken, and then I will move. I agree with the chairman. It is time we move on. I think we have covered the issues.

What I am going to send to the desk, but I will not offer at this moment, is an amendment—and I will tell the body that if the tabling motion fails, I will offer this amendment, cosponsored by Senator DECONCINI, Senator GORTON, Senator STEVENS, Senator DOMENICI, and Senator BURNS—an amendment that is a work product of a broad cross-section of citizens and Forest Service officials that streamlines and clarifies the appeals process, and establishes standing and does not—does not—damage the process.

I am prepared to do that, and send to the desk that amendment. I will not offer it at this moment, but I will be prepared to do so if the tabling motion fails.

I understand the Senator from Alaska is ready to speak at this moment. Upon the conclusion of his speaking, I will attempt to regain the floor for the purpose of moving to table.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, I want the junior Senator from Alaska to have an opportunity to speak. I want the Senator from Georgia, if he wishes, to again speak. I want to limit this time, but I want to do it with the understanding, because there is going to be a motion to table—that has already been said—I want to do it with the understanding that that time limitation is only with respect to the motion to table because I know I will not get an agreement otherwise.

And also, I know that any Senator who gets the floor may speak for 3 hours, or 4 hours, or 6 hours if he is bitterly opposed to this and feels he does not have the votes. He may go on and on.

How much time would the Senator from Alaska like?

Mr. MURKOWSKI. The Senator from Alaska appreciates the floor manager's consideration, Mr. President. I understand there is a motion to table pending. It would be my thought, if there is sufficient support, I will talk for some time.

I think the proposal is fair. I imagine 5 minutes will be sufficient for the Senator from Alaska.

Mr. BYRD. In fairness to the Senator from Georgia, how much time would he need?

Mr. FOWLER. I will need 5 minutes, at most.

Mr. BYRD. Mr. President, I ask unanimous consent that before the motion to table is made, and it has already been indicated it will be made, that the Senator from Alaska [Mr. MURKOWSKI] be permitted to speak for 5 minutes; the Senator from Georgia [Mr. FOWLER] be permitted to speak for 5 minutes; and that the motion to table be made. And if the motion to table fails, it is understood there would be no time limit on the amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Alaska [Mr. MURKOWSKI] is recognized.

Mr. MURKOWSKI. I thank the Chair. I thank the Senator from West Virginia.

Mr. President, the national climate for harvesting timber from public lands, I believe we are all aware, is worse than ever before in the history of our Nation. And we see no relief in sight.

We struggle simply to preserve access to the forest resources of the Nation. Legal challenges of national forest timber sales and forest plans skyrocketed in fiscal 1991; 636 appeals were filed on 472 forest sales nationwide.

At the beginning of 1992, there were 1,453 appeals already. And if we compare this with the average of 170 appeals each year, from 1983 to 1985, we can clearly see the direction.

Does one ever wonder what happens to those appeals? In 1991, only 6 percent were upheld. The costs of the appeals to the American taxpayer: 1.8 billion board feet of timber were tied up in the appeals, with hundreds of millions of board feet ending up delayed or canceled. It cost $11 million to process the appeals, and a work force investment of 152 years of staff time. The cost in jobs lost in 1990 alone has been estimated at 38,000 nationwide. Potential economic losses associated with appeals in 1990 were $196 million in Federal taxes, and $180 million in payments to counties.

Every sale put up by one company in my State of Alaska was appealed—every single sale—affecting roughly 300 million board feet.

We are locked in a battle, Mr. President, to maintain a reasonable, responsible timber supply. Families are being uprooted; whole towns are shutting down. The Spotted Owl Protection Program is projected to result in a loss of 93,000 jobs in Washington, Oregon, and California; endangered salmon protection on the Columbia River could be even worse. Sooner or later, my own forest in Alaska, the Tongass, could face its own spotted owl disaster. We already had a close call with the marbled murrelet.

The battle is waged over access to our national mineral resources. It is fought over grazing rights, drilling for oil, damming rivers for power, and building new homes for our children. We are locked in a struggle with a very vocal, powerful, very well-organized and very well-funded preservation elite—elite—minority, who oppose any consumptive or renewable use of public lands.

This minority freely uses the Forest Service appeals process to achieve their goals. The preservationist elite want to preserve the Nation's forest, range lands, rivers, and even oceans as restrictive and very personal playgrounds for the affluent few.

Mr. President, I ask unanimous consent to print in the RECORD a letter from Koncor Forest Products, Alaska Pulp, Alaska Forest Products Association, and the specific format used on the blank appeal process.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

KONCOR FOREST PRODUCTS CO.,
Anchorage, AK, April 10, 1992.

APPEALS STAFF (NFS),
Forest Service, USDA, Washington, DC.

DEAR SIRS: Your efforts to modify the regulations relating to the administrative appeals process is to be commended. There is already far too liberal access to the courts for anti-development groups. They have been using the present appeals process as just one more source of litigation ammunition.

The preservationists know that they can gain some concessions from either an agency or company every time they tie up an action. Your proposal to eliminate the administrative appeal option is a good initial step in getting this country back on some semblance of a reasonable track.

I encourage you to stick by your proposal and get these changes implemented. They are long past due. Federal and state agencies, without exception, err on the side of conservatism when they allow development or utilization of our country's natural resources. There is no reason to have an appeal process that is only used as an additional means of hindering development without adding any significant environmental benefits to the activity proposed.

Sincerely,

JOSEPH F. WEHRMAN III,
Governmental Relations Forester.

ALASKA FOREST ASSOCIATION, INC.,
Ketchikan, AK, April 13, 1992.

APPEALS STAFF (NFS),
Forest Service—USDA,
Washington, DC.

DEAR CHIEF ROBERTSON: Thank you for offering the opportunity for the Alaska Forest Association to express our support for your proposed rule to end appeal of project decisions. It is essential that you adopt and implement this rule as soon as possible. We believe the proposed 30-day comment period for draft project decisions will be a much more effective way to identify and address public concerns. We have long been disturbed by both the enormous cost of processing appeals and the lengthy delays in carrying out management decisions made in forest plans. The proposed rule should go a long way towards remedying the situation.

The current appeals procedure is appalling. It is the single most important reason for the Forest Service having become ineffective as a land management agency. On the Tongass National Forest nearly all of the timber sales have been appealed in recent years. Through the appeals process, obstructionists have crippled the timber industry by delaying and reducing timber supply. Most of the appeals do not change land management decisions or the quality of on-the-ground activities but are lost on procedural grounds. The process is consistently abused as evidenced by high school and college classes that appeal all timber sales on forests such as the Colville as a class project. The current process is very costly and a drain on Forest Service appropriated funds. Obstructionists recognize that if the Forest Service is spending money on appeals, they are not spending it on timber management as Congress intended. It is a method of defeating the appropriations process after it is passed by Congress. By changing the appeals process there is a possibility of real budget savings in the Forest Service. And finally the appeals process has completely destroyed the moral of many of the finest professionals in the agency.

The proposed rule is a step in the right direction, but more is needed. Appeals of forest plan decisions take seemingly forever to resolve, and the process urgently needs improvement. Please include in your final rule the following changes to the appeal procedures for forest plans:

1. Shorten the time allowed to reach appeal decisions. We recommend allowing only 60 days, and if a decision is not reached by the deadline the appeal shall be considered denied. We also recommend you eliminate the provision for second-level discretionary review.

2. Require appellants to establish standing to appeal forest plans by submitting written comment stating their concerns during the public involvement period and before the decision is made. Issues not raised in their public comments cannot be raised in the appeal unless they can show it is new information not available to them prior to the decision.

3. Appellants must be required to post a bond, and if the appeal is denied or dismissed, the bond is forfeited.

4. Negotiations may be allowed, but they must be completed within the time period allowed for the decision. The decision daadline may not be extended. Intervenors must be invited to fully participate in the negotiations.

Please amend the proposed rule to include these needed changes to improve the decision-making process for both plan and projects. To reduce the cost and improve the effectiveness of national forest management, please implement a new rule as quickly as possible.

Sincerely,

LARRY B. BLASING,
Administrative Assistant.

ALASKA PULP CORP.,
Sitka, AK, April 23, 1992.

APPEALS STAFF (NFS),
Forest Service, USDA, Washington, DC.

DEAR CHIEF ROBERTSON: I stand firmly in support of the proposal to disallow post-decision administrative appeals of land management project decisions on national forests, on the grounds that a thirty-day public review of such is adequate. As a timber industry employee totally dependent on National Forest timber, I feel it is imperative that some action be taken to streamline the EIS appeal process and reduce costs associated with appeals if we are to continue business.

A thirty-day pre-decisional notice and public comment period should be sufficient. The existing administrative timber sale appeals system, with over 3,000 appeals in the last two (2) years, has exerted an astounding cost in frivolous delays in forest management projects, damage to timber-dependent communities, and availability of timber for home construction.

The operation I am associated with has had every sale offered by the Forest Service appealed by third parties (the same party with a different name in each case). These appeals have lasted for as long as 7–8 years with up to 300 MMBF+ made unavailable. The results have disrupted jobs in both the woods operations and the mills. The impacts are not only felt by employees of the affected logging and milling operations, but associated forest and support businesses dependent on logging and milling operations.

The revision will simply repeal an out-of-date (1907) and unnecessary process regarding timber sales, most of which the rationale for such appeals have been removed by the NEPA and NFMA. The general outcome of these appeals will be preserved considering that only 9% of 1990 appeal decisions and 6% of 1991 decision resulted in a reversal of original agency proposals. But in the same regard, I understand, it will save the Forest Service an estimated $11 million annually in processing appeals! The revision still allows the citizens of the United States access to national forest decision-making, it just reinforces the emphasis that it needs to be done in a timely manner.

I, as a United States citizen, am tired of the senseless and unending appeals process that has allowed special interest groups to manipulate our government and our lives. Your proposed rule change is a step in the right direction. Do not stop with this move, find other ways to modify the NEPA procedure so that you can get on with providing economic timber to dependent industry as prescribed in NFMA and other laws providing for use of the Nation's timber resources.

Thank you for the opportunity to comment.

Sincerely,

CAPRICE D. SCARANO.

JUNE 13, 1991.

Re Notice of appeal of compartment decision notice for compartment(s) 1644, 1645, 1655, Womble Ranger District, May 2, 1991.

JOHN E. ALCOCK,
Regional Forester, U.S. Forest Service, Atlanta, GA.

DEAR MR. ALCOCK: Pursuant to 36 CFR 217, this is a Notice of Appeal. We enclose a Statement of Reasons for Appeal of the Decision Notice and Finding of No Significant Impact for Compartment(s) 1644, 1645, 1655, Womble Ranger District, for even-aged management and herbicide use and possibly thinning and group selection, dated May 2, 1991, and signed by John M. Curran, Supervisor, Ouichita National Forest.

ELEMENTS OF THE DECISION OBJECTED TO

We wish to appeal the decision to harvest 54 acres of timber by the seed-tree logging method, and 61 acres by the shelterwood logging method, with the intended follow-up pine management. We also wish to appeal the decision to apply pesticides on 329 acres. If the information requested below on thinning and group selection will not be provided in a implemented EA/decision notice, then we wish to appeal the 593 acres of thinning and 75 acres of group selection.

ELEMENTS OF THE DECISION SPECIFICALLY NOT OBJECTED TO

We do NOT wish to appeal the decision to harvest 203 acres by single-tree selection management. Nor do we wish to appeal the harvest of 75 acres by group selection and 593 acres by thinning if the information requested below on thinning and group selection can be provided in a supplemented EA/decision notice.

STAY OF ACTION REQUESTED

We request a stay of any action related to the proposed logging of 54 acres by the seed-tree method, and 61 acres by the shelterwood method, or any other form of even-aged management which might be substituted, and a stay of action on proposed herbicide use on all 329 acres, pending a final decision on this appeal. If those activities are allowed to occur, they will damage the potential of the lands to provide for our use as will be shown below. If these impacts occur, then our potential of forest use will be compromised and these impacts will prevent a meaningful appeal on the merits while the appeal is in progress. For the site-specific points of concern that the appeal record will show, we request that you grant this stay request. We request a stay of action on thinning and group selection if the EA/decision notice will not be supplemented to provide the information requested below. We do not wish to stop the thinning or group selection at this time; we merely wish to obtain information prior to the logging by these methods.

* * * * *

We do not ask a stay of action against the proposed 202 acres of single-tree selection harvest if the harvest is done without herbicide use. Nor do we request a stay of action against the harvest of 75 acres by group selection, nor 573 acres of thinning if the group selection/thinning will be done without herbicide use and if the information requested below will be provided prior to the logging. Our lack of request for a stay of thinning and group selection is contingent upon the relief requested below that the EA/decision notice will be supplemented to provide the information requested on thinning and group selection.

Furthermore, we request that the Supervisor instruct the District Ranger to move forward if feasible to separate out the selection management or thinning portions of this decision by amendment or "pen and ink" changes to the decision and process this portion of the sale in the regular timber sale schedule. In the latter regard, we are basically asking at this time for a stay of the District Ranger's decision to halt the scheduled preparation of the entire sale merely

because the even-aged management portion of it may be granted a stay of action. We further ask for a stay of the District Ranger's decision to halt the scheduled preparation and logging of the selection management or thinning portion of the sale just because later herbicide use may be stayed. We realize that the District Ranger has not yet made these decisions, but we hereby request to be notified of such decisions, including written supporting rationale, when and if made. We request notification even if the decision is a de facto, unwritten, unsigned one. And we hereby notify the U.S. Forest Service that we wish to appeal the decision, if made (whether in writing or not), not to implement routine preparation for the proposed selection harvest and thinning while the even-aged management and herbicide use are under appeal. The history of Quachita Forest personnel withholding—some for almost two years—thousands of acres of selection cuts and thinning that were never objected to and never stayed but that were part of decisions that contained even-aged proposals that were appealed constitutes a decision with serious implications for the timber industry, so this is a valid concern. Further, we ask that the District Ranger consider, and provide written supporting rationale for his ultimate decision, offering the selection management and thinning portion of the proposed timber sale in sale volumes of 5,000 to 100,000 board feet so that local small loggers can afford to bid on it.

DOCUMENTS INCORPORATED BY REFERENCE

We hereby incorporate by reference all appeals of the Vegetation Management Record of Decision and Environmental Impact Statement, including all attached exhibits, references, and appendices.

For the reasons cited below, we also hereby incorporate by reference all appeals, except that of Richard Gorton, Jr., of the Record of Decision for the Amended Land and Resource Management Plan and Final Supplement to Final Environmental Impact Statement, Quachita National Forest, including all attached exhibits, references, and appendices.

We are aware that you have received from the Chief of the Forest Service a copy of each of the above-referenced appeals, so in the spirit of the Paperwork Reduction Act and other federal statutes and regulations, we do not intend to duplicate that material.

As will be explained below, the deficiencies in the project-level analysis at hand are inherently related to the deficiencies in the 1990 Land and Resource Management Plan (LRMP), and vice versa. For this reason, meaningful presentation of our case on the merits of this project-level appeal cannot be made without reference to the two Forest-wide (or programmatic) EIS's and ROD's cited above. Appellants are aware that it is the position of the U.S. Forest Service that the appeal records of

State-wide decisions will be disregarded if incorporated by reference into project-level appeals. Appellants hereby notify the U.S. Forest Service that it is appellants' view that the burden that the Forest Service is attempting to impose by requiring that two copies of several programmatic document appeal records of several hundred to more than 1,000 pages each be attached to each appeal on up to 100 project-level decisions per year is an arbitrary and capricious one: one that violates the spirit of 36 CFR 217, the National Forest Management Act, and NEPA; and one that is improperly designed to avoid or limit judicial review of agency decisions. Because the agency has continued, and now continues, to issue project-level decisions for even-aged management while appeals and litigation of the LRMP's (both 1988 and 1990) and EIS's (both the "final" and the "supplement to the final") were and are in progress, project-level relief is the only apparent relief available, and it is appellants' view that it is ludicrous to repeat the same basic points over and over that are contained in the plan appeal and the vegetation management appeal. In fact, NEPA makes plain that the purpose of "tiering" project-level Environmental Assessments to programmatic EIS's is to avoid discussing the same points over and over. If that is the case, then that is also true of the points made in appeals of programmatic documents. Appellants hereby notify the officer reviewing this project-level appeal that we consider the points and documents that are part of the plan and vegetation management appeals to be part of this project-level appeal record and that those points and documents should be taken into account by the reviewing officer and responded to.

EXHAUSTION OF ADMINISTRATIVE REMEDY

Appellants hereby notify the agents and employees of the U.S. Forest Service who process this appeal that appellants intend to interpret the failure of the U.S. Forest Service to rule on this appeal within the time frame specified in 36 CFR 217, including no more than 5 days for transfer of documents, as a denial of this appeal and completion of exhaustion of all administrative remedies by appellants.

APPELLANTS

Sherry Balkenbol is a resident of Polk County, Arkansas, and is an inholder within the Ouachita National Forest and frequent Forest user who has been involved in the Forest Plan development and appeals process since 1985. She is an individual appellant of the Vegetation Management appeal and the 1990 LRMP appeal, a plaintiff in the judicial appeal of '86 LRMP/'90 ALRMP/VMROD/FELS/FSFEL as well as a member of the Sierra Club and Defenders of the Ouachita Forest which have also appealed both decisions.

Appellant Beth Johnson is a resident of Dallas, Texas, and is a frequent Forest user who has been involved in the Forest Plan development and appeals process since 1986. She is a member of the Sierra Club which has appealed both the Vegetation Management ROD and the 1990 LRMP ROD. She is an Interviewer in the above-cited lawsuit. Appellant Defenders of the Ouachita Forest is a mine-based citizens' organization whose members live near and recreate in the Ouachita National Forest. It is a plaintiff in above-cited lawsuit.

Appellant Arkansas Chapter Sierra Club is the locally based entity of a national conservation organization whose members lead numerous recreational trips into the Ouachita National Forest each year. It is a plaintiff in above-cited lawsuit.

RELIEF REQUESTED

In addition to instructions mentioned above to be given to District Rangers that they move forward on processing portions of decisions not objected to, and to the stays of action requested above for temporary relief pending the outcome of this appeal, appellants request the following permanent relief:

Appellants request that for the acreage proposed for thinning and group selection, the EA/decision notice be supplemented to provide a description of the existing disaster class distribution per acre of the stands to be thinned or group select cut.

A description of what the target diameter-class distribution will be after the thinning group selection. Appellants show that this information be provided in terms of both numbers of pine trees per acre in each diameter class and how that distribution would be plotted on a curve. For group selection, the size of the canopy opening should be specified to the nearest one-fourth acre for each stand—i.e. "stand 12, one-half acre group cuts, stand 14, one-fourth acre group cuts"—and the total acreage of canopy to be removed per stand acreage should be specified—i.e. "stand 12, three acres of 15 to be removed in openings of maximum one-half acre group cuts." We do not object to the carrying out of the logging by thinning/group selection; we only wish to obtain important information at this time, before logging removes the ability of the agency to obtain that information, to help us evaluate some concerns we have about the effects of these two methods on the forest resources.

Appellants request that the Decision Notice be amended, or that pen and ink changes be made, such that:

(1) preparation for the proposed 202 acres of selection management and 593 of thinning may proceed, without herbicide use, on the regular schedule as set forth by this Decision Notice (subject to the obtaining of the information requested for thinning and group selection).

(2) the 54 acres proposed for logging by the seed-tree method, and the 61 acres proposed for logging by the shelterwood method be harvested instead by single-tree selection management, without herbicide use, on the regular schedule as set forth by this Decision Notice.

(3) all proposed timber management by herbicide use in the area affected by this Decision Notice be conducted by alternative hand tool (chain saw and machete) means.

If the agency chooses not to grant the amendments/changes requested above, appellants request that before any form of advantaged management or herbicide is applied to the acreage involved in this decision, the Decision Notice and Finding of No Significant Impact must be withdrawn and a full Environmental Impact Statement must be prepared. If the amendments/changes requested above are not made, appellants on behalf of themselves further hereby request (for reasons cited below related to the inadequacy of the FONSI determination) that a hearing with at least thirty (30) days' notice be held in Mt. Ida, Arkansas/Oklahoma, in conjunction with scoping to prepare the draft EIS, and that another hearing with at least 30 days' notice be held in Mt. Ida to provide public comment after the draft EIS is prepared.

STATEMENT OF REASONS

1. For the reasons listed below (and those found in the OWL and other appeals of the 1990 LRMP), appellants challenge the Finding of No Significant Impact (FONSI) for this Decision because it is in error. The FONSI is based on erroneous or incomplete information, in violation of the National Environmental Policy Act (NEPA). As shown below (and in the OWL and other appeals of the 1990 LRMP), the routine FONSI for even-aged management on project-level decisions is a circumvention of NEPA and the National Forest Management Act (NFMA). The damaging site-specific impacts of even-aged pine management and herbicide use are such that they require a full site-specific Environmental Impact Statement, since the LRMP admits that it has not considered such impacts on this site. This is true because among other things, as shown below (and in the OWL and other appeals of the 1990

LRMP), neither the project-level Decision nor the LRMP provides sufficient evidence of completion of the proper inventory of resources of this site (or Forest-wide), plans for proper monitoring of the impacts of management practices on this site (or Forest-wide), proper interpretation and implementation of the diversity provisions of NFMA and its implementing regulations, and proper interpretation and implementation of the optimality/appropriateness sections of NFMA.

The FONSI is based, in part, on the inaccurate claim that the project will not effect health or public safety. In fact, as shown by the appeals of the Vegetation Management ROD/FEIS, the Forest Service has insufficient basis to make that claim, as many of the formulations of herbicides used are untested. Also, as shown in the LRMP appeals, even-aged management will affect health or public safety because it will increase local residents' risk of contracting Lyme's Disease.

The FONSI is based, in part, on the inaccurate claim that the project will not affect any unique characteristics of the geographic area. In fact, as shown below, the Forest Service has not inventoried this particular site, nor the compartment as a whole, for the full range of applicable resources required under NFMA, so the agency has insufficient basis to make this claim.

The FONSI is based, in part, on the inaccurate claim that the effects of the project are not likely to be highly controversial. In fact, as shown by over 400 news articles and columns about even-aged management in the Ouachita Forest in the past 12 months (included as part of the OWL appeal of the LRMP, incorporated herein by reference), each new even-aged management cut and herbicide application is highly controversial in the Ouachita. This is true, in part, because the articles focus not on even-aged management in a particular location in the Forest, but on the total amount of public land already committed to the practice and on the amount of additional clearouts proposed. More than 6,000 comments (15 times more than in 1985) favoring the no-herbicide selection management Alternative V over Alternative W also indicate the continuing controversy over any new even-aged management cut.

The FONSI is based, in part, on the inaccurate claim that the project does not contain highly uncertain, unique, or unknown environmental risks. In fact, use of untested herbicide formulas and widespread use of pine management (of which this is an incremental part) in an ecosystem normally composed of different tree diversity have highly uncertain or unknown environmental risks to wildlife and humans and because of the potential for increased insect and disease outbreaks. The quality of sawtimber is still uncertain from end-of-rotation pine plantation cuts, and to continue to commit almost one million acres, in small increments, to intensive pine management without knowing the quality of sawtimber that will result is highly uncertain. Furthermore, because the Forest Service has inaccurately inventoried this site, it cannot make the determination that the even-aged management and herbicide use proposed in this decision do NOT involve unique environmental risks because it has not considered the environmental values that exist on the site now.

The FONSI is based, in part, on the inaccurate claim that the project will not establish a precedent influencing approval of future actions with significant effects. Committing almost one million acres to pine management is a significant effect, especially since, as shown below, 274,000 acres of that one million is mis-classified as pine when it is really hardwood. Each new even-aged management area is part of that commitment and part of that significant effect. Also, since the Forest Service is overcutting at present on an annual basis in part because of unproven claims about future increases in yields from pine plantations and because of the assumption of continued replacement of space now occupied by hardwoods with commercially favored pine trees, if the Forest Service continues to commit very much more of the timber base to even-aged management, it will be forced to continue even-aged management in the future in order to keep sustained yield forest-wide in the short-term.

The FONSI is based, in part, on the inaccurate claim that the project is not related to other actions with individually insignificant, but cumulatively significant impacts. Massive type conversion, in violation of NFMA, as shown below, is occurring, and this increment is part of the whole picture. Neither the lost of native diversity on this site, nor the cumulative loss of native diversity of the forest as a whole are adequately considered, in violation of NFMA and NEPA.

The FONSI is based in part, on the inaccurate claim that the project will not affect listed or eligible sites on the National Register of Historic Places or cause loss or destruction of significant scientific, cultural, or historic resources. In fact, neither the EA nor the FSFEIS provides any evidence that such possible resources on this site have been inventoried. The statement in the FONSI that a survey will be conducted and that if any such resources are found they will be protected proves that this is the case. A FONSI can only be properly determined after such a survey has been conducted, not before. The same holds true for the FONSI's inaccurate claims that the project will not adversely affect endangered or threatened species or critical wildlife habitat, because as admitted by the FONSI, no proper inventories of such species or habitat have been conducted in order to make the determination that such species or habitat will not be affected.

For these reasons, the FONSI granted in this decision is wholly inadequate based on the inadequate EA provided, in connection with the inadequate FSFEIS to which the EA and this decision are tiered. Further environmental analysis must be conducted, in the form of an environmental impact statement, to enable a decision-maker to truthfully assess these site-specific impacts.

If the Ouachita Forest will provide something in its Environmental Assessments (EA's) and in its databases other than theoretical claims about impacts, appellants can provide something other than disagreement about claims: we can analyze how you arrived at your figures and whether your analysis is correct. The exchange of information and public scrutiny of the agency's scientific analysis is what NEPA is supposed to be about. It is also provided for strongly in NFMA and its implementing regulations. Our initial analysis of the agency's COMRATS "data" shows that it uses lookback formulas to make claims about impacts.

COMPATS, which is the basis for the Forest Service's site-specific analysis, is known to be riddled with errors and should not be relied upon to generate site-specific EA's. Actual inventories and analysis should be done on-site, and that information should be provided in the EA. For example, as shown in W Exhibit 30 in the LRMP appeal by OWL, the Forest Service's data for Stand 14 of Poteau Compartment 1237 showed the age of "the stand" as more than 58 years old. When an actual random sample of annual ring counts after the stand was recently logged showed the average age at 44 years, a great disparity in the data. Stand 25 of the Womble District Compartment 1676 was shown in the CISC data at more than 71 years old. When the actual average was 54. By claiming stands are older than they are, Forest Service decision-makers are routinely wasting the timber producing potential of stands and are violating NEPA by relying on incorrect site-specific data for their decision-making.

Furthermore, COMPATS and CISC data is collected in such a way, and contains errors, that often bias the analysis and the decision-maker's toward even-aged management. This method of gathering data is arbitrary and violates NEPA. In the example of Stand 14 of Poteau 1237 above, the actual ring count showed a wide variety of ages present, indicating that the attempt to claim "an age" for "the stand" was part of the Ouachita Forest personnel's strategy of attempting to fit a forest with essentially uneven-aged characteristics into an even-aged data-gathering and decision-making mode. According to the Final Supplement to the Final Environmental Impact Statement (FSFEIS) for the Ouachita LRMP, managed even-aged stands are characterized by no greater difference in age between trees forming the main canopy level than 20 percent of the age of the stand at harvest rotation age (p. GS–3). If all the trees in the Poteau 1237 sample wore in the canopy and were allowed to grow to a 70-year rotation, there would be more than a 20 percent difference in age, indicating that the stand does not possess characteristics of even-aged management but the method of recording data, arbitrarily, allows personnel to choose only one "age" to record in the CISC database. It may be argued that by counting only annual rings on stumps after logging leaves the researcher has no way to know if each stump counted had been in the main canopy level of the stand, but further information in the FSFEIS indicates that age of canopy level trees is not the only determining factor. The FSFEIS states that even-aged stands may contain no more than two age classes (p. I–1). In fact, the actual sample of Poteau 1237 does show at least three age classes (at ten-year intervals) on the stand, further indicating that the stand fits much better into an uneven-aged data-gathering system but has been arbitrarily "fitted" into an even-aged mold.

But the greater point here is that the project-level decision-making that is guided by the LEMP is biased toward even-aged management by an overemphasis in the data-gathering on age as opposed to diameter class structure present on the stands. For instance, the FSFEIS, p. I–9, claims "natural stands on the Ouachita National Forest are even-aged." As shown above in the two sample ring-count stands, this claim is not necessarily so. But this claim is misleading because, as shown repeatedly by James B. Baker, Project Leader for the Southern Forest Experiment Station, site classes are at least as important as age classes, if not more so, in managing timber.

4. The ROD, p. 1, for the FSFEIS and the ALRMP, March, 1990, states that at each planning and decision-making level (such as the site-specific project-level at hand), the Forest Service must comply with all applica-

ble laws and regulations. This means that the full letter and spirit of NFMA and 36 CFR 219.1 et seq. apply to this project-level decision and this EA, including all requirements for inventorying and monitoring, requirements for maintaining diversity "in the planning area," etc. As shown below, in no way does this EA meet those requirements, thus violating the ROD. Further, this decision and EA and FONSI violate the statement on p. 1 of the ROD that NEPA be fulfilled at the point of irreversible and irretrievable commitment of the resources to this project on this particular site. Harvesting this site by even-aged management commits this site, from a practical standpoint, to a particular management system with its inherent weaknesses and damages, for longer than the length of one human life, which is for all practical purposes an irreversible and irretrievable commitment of resources. Nowhere on the planet has even-aged management been practiced for more than three rotations, and where it has it has rapidly depleted the productivity of the land unless extraordinary mitigation measures have been implemented, so we must assume it is an irreversible and irretrievable commitment. The use of untested formulas of herbicides also irretrievably commits this site to unknown effects.

5. Any discussion of environmental impacts from seed-tree cutting in this Environmental Assessment is inadequate because it has omitted discussion of at least two major concerns and environmental impacts that frequently occur after seed-tree cutting but which are typically considered impacts of clearcutting. These are ripping and planting of genetically altered pine seedlings. This occurs because seed-tree cutting in the Ouachitas fails to reproduce to adequate stocking successfully at least half the time, and then artificial reproduction is required. Concerns and possible environmental impacts from these actions, and the legal inadequacies of the FSFEIS in regard to these, are well documented in the OWL appeal of the ALRMP. These concerns and inadequacies make an adequate site-specific discussion of these actions mandatory in this EA and Decision. COMPATS provides an inadequate basis for predicting impacts from seed-tree cutting on this location because it fails to take into account the probable or possible ripping and/or planting that will occur if the seed-tree cut fails to reproduce successfully with natural regeneration. For these reasons, this decision is based on inadequate NEPA documentation and therefore violates not only NEPA but also NFMA because this cutting method cannot be determined to be appropriate to this site if the likely impacts on this site have not been adequately assessed. Moreoever, because seed-tree cutting in the Ouachita has a history of failure and often results in the use of ripping and planting and complete removal of all canopy trees as in a clearcut (as admitted in the LRMP/FSFEIS), seed-tree cutting in the Ouachita must meet not only NFMA's appropriateness test but also its optimality test. As discussed below, because the Ouachita by its own admission supposedly has no adequate long-term studies to illustrate the viability of single-tree selection management in this ecosystem, the Ouachita cannot make a comparison of single-tree harvest and clearcutting or seed-tree-with-seed-tree-removal-in-combination-with-artificial-planting. Therefore the Ouachita cannot make the determination that either clearcutting or seed-tree cutting is MORE "favorable or conducive to reaching the specified goals of the management plan," let alone the determination that they are the MOST favorable, as required by the Senate Committee Report's definition of "optimum in NFMA. Therefore the proposed use of seed-tree cutting in this Decision Notice, with its possibility of resulting in this ecosystem in impact very similar if not identical to those of clearcutting, cannot meet NFMA's requirements and thus is in violation of NFMA's optimality section.

Appellants hereby notify the agency that if this cut is carried out and later requires ripping, planting, or other site preparation not discussed in this EA/Decision Notice, the NEPA process must be repeated and a supplemental Decision Notice must be prepared prior to any ripping or planting and appellants hereby request that it be sent out to these appellants and other interested parties.

Mr. MURKOWSKI. Mr. President, the proposed Forest Service regulations streamlining the appeals process is a much-needed improvement. The public will still have the opportunity to comment on all proposed sales.

I cannot support the Fowler amendment.

I had printed in the RECORD a copy of the actual appeal process. it is a preprinted form. Anyone can get a copy of this preprinted form. Simply address it and sign it, and that constitutes the adequacy of the appeals process. No good faith; nothing but an opportunity for obstructionists who are hellbent on one particular goal, and that is to close the renewable aspects of the forests of this country.

This is not a responsible procedure. This is not a procedure that provides any contribution of any kind by the parties filing the protest. There should be some balance proposed in the manner in which these protests are filed.

To have a blank procedure that can tie up thousands of jobs; shut down mills; shut down the economy of communities and affect the lifestyle of hard working American men and woman is irresponsible.

As a consequence, Mr. President, I appeal to every Member of this body to look at this blank procedure that is available. If they take a look at it, they will come to the same conclusion as the junior Senator from Alaska: That this is irresponsible legislation on the part of this body.

I encourage my colleagues to object to the position of the Senator from Georgia.

I thank the Chair, and I yield the floor.

The PRESIDING OFFICER. The Senator's time has expired.

The Senator from Georgia is recognized.

Mr. FOWLER. Mr. President, let me state very quickly some facts, despite what was heard from the junior Senator from Alaska and others. First of all, only one in every seven timber sales nationwide is appealed by the public. Second, under the law, the Forest Service currently has the authority to dismiss appeals without any delay or any action, without a decision on its merits, those that are frivolous, and they do that. That eliminates 95 percent of the so-called frivolous appeals, as the Senator from Alaska said, where you fill out a form.

I remind the Senator from Alaska that if you appeal a decision by the Social Security administration about your right to earn your Social Security benefits, you fill out a form. If you are a veteran of the Second World War and you need a new leg, you go to the Veterans' Administration; you fill out a form. These are the basic citizen rights in a free country, in a democracy, to appeal a decision of their government that effects themselves.

This amendment, my friends, is not about any private property rights. It is only about our Nation's lands owned by the citizens of every State, our national forests, our public lands that are being subsidized through below-cost timber sales to make money for private timber companies off of our public lands. My amendment simply tries to codify a citizen appeal process that the Forest Service has voluntarily been using basically for 85 years, since 1907.

I am not one who goes around with editorials in his pocket, but I have searched in vain for anybody who studies this issue who disagrees with it.

I ask unanimous consent to enter into the RECORD these editorials from the West which my friends in opposition would read. Here is one from Eugene, OR, March 24, 1992, "Appeal Ban Won't Help. The Federal Government can stop the blizzard of timber sale challenges in two ways. It can change the laws and leave the Forest Service vulnerable to successful challenges. Or it can follow the laws currently on the books. Closing down the administrative appeals process would not resolve that dilemma but would merely shift the problem elsewhere."

The Oregonian: "Unappealing Changes."

The Oregonian: "Maintain Forest Appeals."

The Register-Guard, Eugene, OR: "Appeal Ban Won't Help."

The Post-Register, Idaho Falls, ID, home State of my friend, Mr. CRAIG: "Cutting the public out." It supports the Fowler amendment.

Lewiston Tribune, Lewiston, ID, the State of my friend from Idaho, Mr. CRAIG: "The Forest Service only has ears for Congress." It opposes the Senator's own position.

And the last one from the New York Times: "Environment Laws Are Eased By Bush As Election Nears."

There being no objection, the editorials were ordered to be printed in the RECORD, as follows:

[From the Eugene (OR) Register-Guard, Mar. 24, 1992]

APPEAL BAN WON'T HELP

Closing the window on administrative timber sale appeals won't help as long as the

door remains wide open. The Department of Agriculture's proposal to ban appeals would simply move fights over timber sales out of the U.S. Forest Service's offices and into the courts. The ban would save neither time nor money.

Agriculture Secretary Edward Madigan proposed the ban as part of an effort to unwind some of the red tape that currently binds the agencies in his department. There's no doubt that administrative appeals of timber sales are a tremendous burden. Three thousand Forest Service timber sales were appealed in the past two years. Appeals must be reviewed by regional foresters or the chief forester, a process that consumes a rising percentage of the agency's energy and resources. It's not surprising that Madigan and the Forest Service would like to rid themselves of the entire process.

But eliminating appeals would not end challenges to timber sales. Environmentalists and others who object to particular sales could still ask the courts to intervene. The Forest Service's record in court does not encourage hopes that a ban on administrative appeals would expedite timber sales. Nor does the legal system's drawn-out process of injunctions, rulings and appeals offer a quick and inexpensive substitute for administrative appeals. Madigan should be looking for ways to keep the Forest Service from being sued, not proposing shortcuts to the courtroom.

Many timber sales reviewed through the administrative appeal process end up in court anyway. Madigan characterized administrative appeals as a "way station" between a proposed timber sale and the courtroom. The process is more than that, and its positive attributes would be lost if challenges went directly to court. Despite the confrontational atmosphere that currently characterizes the battle over federal timber policy, administrative appeals often work as intended by helping the Forest Service identify and correct deficiencies in its timber programs. A ban on appeals would eliminate a potentially productive alternative to a legal battle.

The federal government can stop the blizzard of timber sale challenges in two ways. It can change the laws that leave the Forest Service vulnerable to successful challenges. Or it can follow the laws that are currently on the books. Closing down the administrative appeals process would not resolve that dilemma but would merely shift the existing problem elsewhere.

[From the Oregonian, Mar. 27, 1992]

UNAPPEALING CHANGES

In the name of economic growth, the U.S. Forest Service is proposing to stop allowing people to appeal timber-sale decisions and similar management actions to agency higher-ups.

That's going too far, even with the Forest Service's companion proposal to provide more public comment before final decisions are made. All the prior comment in the world doesn't provide for the review of a decision that an appeals process does.

The Forest Service's problem with appeals is that they have gotten too popular. Agency officials and the timber industry have become frustrated by the delays as virtually all decisions are appealed, then reviews—and sometimes modified—by higher Forest Service authority. Critics of the process contend that many appeals—including some that seem to be college-class projects—are aimed at blocking decisions, not at improving them, and use vague charges of failing to follow required procedures.

But if the Forest Service's problem is with vague or frivolous appeals, it should deal with those precise problems—by requiring specificity or establishing procedures for quickly screening appeals without apparent merit. Preventing all appeals merely feeds the notion that the Forest Service wants to tilt toward business interest without any pesky questions being asked afterwards.

Agriculture Secretary Edward Madigan heightens that suspicion. Dropping timber-sales appeals, he said, is a response to President Bush's order to ferret out regulations that hamper economic growth. Actually, the timber industry and Forest Service officialdom in Washington, D.C., had been trying to make this kind of change far before Bush's order.

True, the Forest Service plans to retain the right of internal appeal for new and revised forest plans. But those plans currently lack the on-the-ground details that come forward with the subsequent timber sales and similar decisions. How, without an appeal, can you make sure those subsequent decisions conform to the broad plans?

Ominously for the Forest Service, another way to challenge a decision will remain—appealing to federal courts. Advocates of the appeals limit hope that the $120 filing fee for a lawsuit will discourage people from going that route. That's not much money, however, and the Forest Service may simply encourage more lawsuits in lieu of appeals: years of delay, in effect, rather than months.

This proposed revision needs revising yet again to retain some public right to seek higher-up review of significant decisions.

Meanwhile, if the Forest Service is going to emphasize advance public comment on decisions, it needs to improve dramatically the ways the public is alerted to pending actions.

[From the Oregonian, Nov. 8, 1991]

MAINTAIN FOREST APPEALS

These are appealing times for the U.S. Forest Service—so many people and groups are appealing its decisions that agency officials say necessary business is getting bogged down in delay, even if higher-ups eventually affirm the challenged decision.

That's why the agency is looking at revising its appeals procedures, including limiting the right to appeal a decision to those who had commented on it ahead of time.

But the number of appeals is also why the Forest Service should retain a broader ability for interested outsiders to seek higher-level review of officials' decisions. After all, about one in 20 of the appealed decisions is reversed, and some of the rest are reconsidered in light of points made in the appeal.

Advance comment is great and should be encouraged. But it's not always easy to find out what's really involved in a potential decision in time to comment in advance. Too, boilerplate comment to hold space for a boilerplate appeal won't gain much.

Forest Service officials say the rising burden is due to some environmental groups' filing virtually blanket appeals of timber-sale proposals. Grounds don't have to be specific, and computers make filing the appeals easy. The resulting internal review provided for by current rules can delay implementing a decision for more than six months, even if the decision eventually is upheld (45 days to make the appeal, 100 days for the next-level official to respond, 60 days if appealed to the next level).

Speed, however, doesn't necessarily make for sound decisions. Appeals can—especially a process that guarantees to decision-makers that somebody's going to be looking over their shoulders. The Forest Service is such a decentralized agency, it's important to assure that peek from above.

The Forest Service hopes to make proposed appeals revisions public next month. Oddly, it is proceeding in a closed way with virtually no public discussion in advance about what it is considering. This closed review raises obvious suspicions that officialdom really is after a way to muzzle environmentalists and will make up its mind, public a proposal in the Federal Register and then seek the required formal comment only after the decision is effectively made.

That's not the way to do it, especially if one goal of the revision is to emphasize public participation in advance of decisions. Some people might have some good suggestions; the Forest Service should at least solicit them before it multiplies hoops for appellants to jump through.

For instance, the Forest Service might consider a two-track appeals process: a formal track with greater specificity and procedural requirements for contenders who are considering eventual litigation; an informal one, similar to small claims court, where a disputant has a forum to make a case easily and cheaply, but also finally.

Meanwhile, if the problem really isn't the appeal but the length of time it takes to review it, there's a pretty obvious solution—don't limit the appeal, speed up the review.

[From the Idaho Falls Post Register, Apr. 3, 1992]

CUTTING THE PUBLIC OUT

A big tree is just about to crash down on the U.S. Forest Service. When the agency announced it was planning to cut down its own public appeals process, it may have ensured even more court tests and more public rancor.

The Forest Service plans to eliminate appeals of timber sales, new gas and oil leases, and grazing decisions on public forests and put a stop to the most effective means the public has to respond to uses of their land.

Forcing environmental or commercial groups into court is an attempt to shift more cost to the public—and this supposedly in the name of cost-cutting. Pretty shifty.

Fortunately, the courts have been a successful haven to challengers, even if it is costly. Rarely has the Forest Service won in court, a testimony to the legitimacy of many of the challenges.

Instead of taking costly time and energy devising laws to barricade itself from public input, the Forest Service should work to avoid appeals by complying with the law from the start. Obviously, it hasn't been doing that.

Secretary of Agriculture Edward Madigan says he will substitute appeals with a 30-day public comment period. Big deal. The law already requires a comment period before most decisions. The Forest Service just wants the public to accept its dictums or, "We'll see you in court." With appeals (which now come after a decision is made) junked, the Forest Service can make any decision it wishes without challenge after public comment.

Ken Kohn, spokesman for the Intermountain Forest Industry Association, said the Department of Agriculture proposal will help protect jobs in towns like St. Anthony. We fail to see how abandoning a public appeals process can make any difference in St. Anthony where the heavily cut Targhee National Forest now requires a major reduction in timbering.

Court records and statements of the agency's own forest supervisors reflect an agency

under political pressure to lay aside its legacy of stewardship for the pottage of marketing ever more trees.

Now is not the time to rob the public of input. The appeals process has, at least, brought some balance between production and conservation on public lands.—JRB.

[From the Lewiston (ID) Tribune, Sept. 4, 1991]

THE FOREST SERVICE ONLY HAS EARS FOR CONGRESS

James Overbay says the U.S. Forest Service, of which he is deputy chief, shouldn't have to put up with meddling members of the public who appeal its timber sales. What does Overbay have to say about meddling members of Congress who first dictate unrealistic sales volumes and then call for the heads of Forest Service officials who fail to deliver?

From reading the report of an interview with Overbay at Missoula the other day, you would think he was in town to defend the independent judgments of Forest Service professionals from outsiders pushing special agendas. During the interview he called for prohibiting appeals of timber sales so that the Forest Service could "move aggressively" to log more trees in roadless areas. He said the service must "tell people that once we make a decision we are not going to re-examine it."

But many people suspect Overbay traveled to Missoula to give Northern Region Forester John Mumma, Overbay's politically beleaguered successor in the region's top job, his walking papers (Mumma announced his "retirement" Friday). The region's recent failure to produce enough logs to keep the timber industry and its beneficiaries in Congress happy has resulted in calls for Mumma's head. And Idaho Sen. Larry Craig has even demanded a monthly accounting from Forest Service Chief Dale Robertson of the region's progress in timber sales.

In full view of these flexing political muscles, Overbay has a lot of nerve complaining about common citizens getting in the way of Forest Service operations. In case he has forgotten, Larry Craig works for the people of Idaho. They do not work for him.

Similarly, the Forest Service works for the American public, not for a handful of members of Congress whose campaigns are supported by timber dollars. It is the public to whom Robertson, Overbay and company owe a full accounting, not only regarding their timber sales but also their personnel decisions.

Yet while Overbay was in Missoula complaining about timber sale appeals, he refused to explain what led to Mumma's supposed retirement. He only said it is not uncommon for top Forest Service officials to be reassigned when they are under fire.

Under fire from whom? It wouldn't be those great foresters in Congress, would it?

If so, it's no wonder Overbay has so little time to hear from the people whose woods these are.—J.F.

[From the New York Times, May 19, 1992]

ENVIRONMENT LAWS ARE EASED BY BUSH AS ELECTION NEARS

(By Keith Schneider)

WASHINGTON, May 19.—As the recession hangs on and the election nears, the Bush Administration has followed a pattern of altering environmental laws and regulations to open more Federal land and the nation's natural resources to development, top Administration officials say.

The pattern emerged last summer, when the White House proposed eliminating restrictions on building and development on half the nation's wetlands. Since then the Administration has fostered a flurry of new proposals to make more of the nation's coal, timber, oil, water and land available to industry and agriculture.

Administration officials say the effort to open natural resources has been aided by President Bush's four-month-old regulatory moratorium in which existing environmental rules are under review and others are being rewritten to reduce their cost to business.

PHILOSOPHY AND POLITICS

Together, the two policies represent the strongest effort to reduce environmental restrictions since the early days of the Reagan Administration, White House officials and critics of the President say.

In public statements and private conversation, Bush Administration officials say this pattern reflects both the philosophical effect of the President's Council on Competitiveness, which is headed by Vice President Dan Quayle, and concern over carrying Western states in the election this fall.

The general thrust of both forces has to shift the balance toward economic concerns instead of the conservationism favored by the main environmental groups.

A SHIFT OF EMPHASIS

"The President has always been in favoring of protecting the environment in a way that is compatible with growth," said David M. McIntosh, the executive director of the President's Council on Competitiveness.

"What you are seeing is a series of decisions that focused on the economic growth side of the balance," he added. "Perhaps what is going on is a shift in emphasis."

Interior Secretary Manuel Lujan Jr. said anti-environmental sentiment among some Western voters also played a role. In the Reagan years these sentiments fueled a movement called the "sagebrush rebellion," which put pressure on the Interior Department to open more Federal land for mining, grazing and logging.

Secretary Lujan has alerted the White House that members of the old rebellion have joined with private land-owners, the timber industry, coal companies and others who rely on natural resources to form a new coalition that calls itself the "wise use" movement.

Mr. Lujan says the Administration should address the movement's agenda to improve its standing with its natural conservative constituency and should not worry so much about sentiment of environmentalists who, he believes, will not support Mr. Bush under any circumstances.

"I have never seen a positive reaction from environmental groups no matter what we do," the Secretary said. "I don't ever expect a positive reaction."

"WESTERN CONSTITUENCY" CITED

In an interview Mr. Lujan, who served from 1969 to 1989 as a Congressman from New Mexico, said he was bringing "the plight of the Western constituency to the White House," and added: "People who live in the West look at the land in a different way than people east of the Mississippi River. Land in our heritage to use and not just lock up and put away, where only backpackers can go. I have been telling the White House staff that our constituency, the conservative Republican constituency, is not pleased at being ignored."

A number of officials agree with Mr. Lujan that the White House is driven by fears that the traditional Republican Party support in the eight Rocky Mountain states, with a total of 40 electoral votes, is eroding. The White House is also following a plan devised by Senator Slade Gorton, a Republican from Washington state, to recapture Oregon, and Washington, the only two Western states Mr. Bush lost in the 1988 election.

Thus, the President's strategy is meant to shore up support among the timber, mining, coal and agricultural groups that anchor the "wide use" movement. Leaders of the movement are pressing for a loosening of policies that they see as brakes on the economy. They also want to protect jobs and families by providing resources that some of the nation's largest industries need to operate.

Last week, in the clearest signs yet that Mr. Bush is taking account of industrial interests in weighing environmental protections, a Cabinet-level committee voted to exempt the Government from the Endangered Species Act and allow the cutting of 1,700 acres of forest in Oregon that provide habitat for the threatened northern spotted owl. Secretary Lujan also proposed legislation, that, if approved, would rewrite the basis of the Endangered Species Act by introducing economic considerations, like the loss of jobs, when deciding if a rare species deserved Federal protection.

Privately, some influential Administration officials agree with the critics that the new policy directives are a sharp departure from Mr. Bush's first year in office, when he proclaimed himself the "environmental President," appointed Mr. Reilly, a leading conservationist, to direct the environmental agency, and won plaudits from conservation groups by blocking construction of the Two Forke Dam, which would have flooded a Rocky Mountain canyon near Denver.

While efforts to change environmental regulations foundered during the Reagan years, the Bush Administration's program has gained some success, particularly in the courts, where the growing number of Republican appointees on the bench have been more sympathetic than their predecessors to arguments favoring industry and property owners seeking to restrict the reach of environmental laws.

Perhaps the most important changes in environmental regulations that the Administration has proposed so far is rewriting rules to limit or eliminate the public's ability to intervene in corporate or government decisions.

In March, Mr. Lujan eliminated the public's decades-old ability to appeal decisions by the Interior Department and to block oil exploration licenses, grazing permits, mining leases and other industrial uses of public lands.

Mr. Lujan said in the interview that useful projects on public lands were being delayed indefinitely by opponents who did nothing more than mail in criticisms, automatically initiating long reviews of the agency's decisions. "It was the 29-cent appeal," he said. "A letter stopped everything. Now if they want to appeal, they go to court."

A month later, Agriculture Secretary Edward Madigan used the same rationale as the basis for proposing to eliminate an 86-year-old rule that gave the public the right to appeal decisions by the United States Forest Service and to block sales of timber on Federal land. The Forest Service, a branch of the Agriculture Department, is preparing to issue the new rule this summer.

"What you see is an understanding by the President that in a recession there is an increased sensitivity to the job side of the

equation," said Michael R. Deland, the chairman of the President's Council on Environmental Quality. "The President has an understanding and empathy for folks out of work. He doesn't want to see additional people put out of work by a rule that does not effectively protect public health and the environment."

Mr. FOWLER. I thank the Chair.

In conclusion, I urge the Senate to reject the motion to table. Do not cut off access to the courts and also say to the public about their own lands, "You cannot appeal."

The timber companies still maintain an appeal at every level of their permit, private companies going on the public's forests to cut the timber for private profit. Not only that, we subsidize it. We build the roads for them. There is $300 million of taxpayer subsidy in this bill alone.

All my amendment would do is say to follow the Forest Service's original recommendation—the decision, as we have debated this, has now been politicized. It has gone over their head—to follow the Forest Service's own recommendation on the appeal process that has been tested, that simply gives to the citizen of the United States an appeal on a decision in his or her national forest in Georgia, Alaska, Idaho. That is all it does. That is all my amendment does.

I urge the defeat of the motion to table.

Mr. SYMMS. Mr. President, the current appeals process too often is a tool for timber harvest hate groups. They use the appeals process to delay decisions and to force unilateral negotiations over an environmental document after there has already been extensive public comment. Participants in the drafting of the decision document are denied further involvement in the process while the USFS and the group or individual who appealed the proposed decision negotiate back-room deals.

The current appeals process is unfair, it wastes millions of taxpayers dollars annually, and could be unconstitutional. These are some of the reasons why the Secretary of Agriculture approved new regulations to reform the Forest Service appeals process.

The Senator from Georgia would have us pass an amendment today that takes us back to more delays, more tax dollars wasted, and fewer decisions made by the U.S. Forest Service. While timber workers in my State stand in unemployment lines, the Senator from Georgia would like Forest Service employees to do more paperwork.

Mr. President, none of us are opposed to due process, but I am opposed to laws, amendments, and regulations that are used by certain groups and individuals to paralyze Federal land management decisions.

This is such an amendment. It is legislation designed for intervenor groups that may have little or no understanding of needs of the local communities in public lands States. We depend on fair decisions by Federal land managers.

Mr. President, hard-working people in Western public lands States just want to be treated fairly by the process of making decisions in National Forests. Frivolous appeals by groups thousands of miles away from a timber sale are bad enough. But, the old appeals process that the U.S. Forest Service is trying to reform requires that the Forest Service negotiate only with that group.

This is unfair. The delay caused and the costs imposed are unfair. Cutting the interested parties out of negotiations is unfair.

Let us not go back to this bad appeals regime. We have the National Environmental Policy Act. The new Forest Service appeals regulations require that only those who commented on the draft decision can appeal it. The new regulations do not do away with appeals, they just make appeals fair to all of the members of the public interested in the proposed decision. On top of this, higher level line officers can still be contacted and still review a lower level line officer's decision.

To conclude, Mr. President, we have a process in place under that act that assures fair and environmentally sound decisions. Let us give it a try. The ink is not even dry on the new Forest Service appeals process and here we are in Congress tinkering already. That is a bad way to implement policy—no public administrator who believes feedback is important in the public policy process would support this amendment.

I urge my colleagues to table the Fowler appeals system amendment.

Mr. BAUCUS. Mr. President, I rise in support of the amendment offered by the Senator from Georgia.

I do so because I believe the administration's proposal takes a meat ax to a problem requiring more delicate surgery.

Last year, almost 400 timber sales were appealed across this Nation. In Forest Service region I, which includes Montana and northern Idaho, approximately 40 sales were appealed. While most of these appeals proved unsuccessful, many pointed out legitimate and serious environmental problems. Both nationally and within region I, over 30 percent of these appeals resulted in the modification or withdrawal of the sale.

Thus, by the Forest Service's own recognition, 1 out of 3 appeals had enough merit to justify some degree of change in the sale.

Moreover, many of these appeals were not brought by extreme environmentalists intent on abusing the system. It is important to keep in mind who uses the appeals system: Hunters, fishermen, ranchers, hikers, cabin owners, and outfitters and guides are just a few examples.

There should be an inexpensive and informal way for American citizens, acting in good faith, to hold the Forest Service accountable. Unfortunately, the administration's proposal fails this fundamental test.

All of this is not to say, however, that the current system works well. I see several fundamental problems that I wish the amendment before us addressed:

First, to all things, there must be a beginning, a middle, and an end. But in many instances, this does not seem to be the case with Forest Service appeals. For example, I believe it is wrong to permit sequential appeals. Once a timber sale has been subject to one round of appeals, that should be the end of it. There is undoubtedly a need for greater finality to this process;

And second, I agree with at least one aspect of the administration's proposal: The need to encourage greater public involvement before a sale is finalized. Individuals who fail to offer meaningful participation during the NEPA process of planning a timber sale should be denied standing to appeal that sale.

Clearly, there is room for improvement in the current system. And I would hope that we could address these improvements by moving legislation through the authorizing committees. However, these improvements should not come at the expense of Americans who have an honest disagreement with their Government—and that is exactly what will happen if the administration's proposal is allowed to take effect.

Thank you, Mr. President, I yield the floor.

The PRESIDING OFFICER. The Chair informs the Senator his time has expired.

The Senator from Idaho [Mr. CRAIG] is recognized.

Mr. CRAIG. Mr. President, before I move to table, I respond very briefly.

Mr. BYRD. Mr. President, that was not included in the agreement.

Mr. FOWLER. Right.

Mr. CRAIG. All right, recognizing that, I move to table.

Mr. STEVENS. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from North Dakota [Mr. BURDICK], the Senator from Tennessee [Mr. GORE], and the Senator from Iowa [Mr. HARKIN], are necessarily absent.

Mr. SIMPSON. I announce that the Senator from Utah [Mr. HATCH] is absent due to a death in the family.

I further announce that the Senator from North Carolina [Mr. HELMS] is absent due to illness.

I further announce that, if present and voting, the Senator from Utah [Mr. HATCH], and the Senator from North Carolina [Mr. HELMS] would each vote "yea."

The PRESIDING OFFICER (Mr. LIEBERMAN). Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 38, nays 57, as follows:

[Rollcall Vote No. 174 Leg.]

YEAS—38

Bentsen	Ford	Packwood
Bond	Garn	Pressler
Brown	Gorton	Pryor
Bumpers	Gramm	Rudman
Burns	Grassley	Seymour
Byrd	Hatfield	Simpson
Chafee	Johnston	Smith
Cochran	Lott	Stevens
Craig	Mack	Symms
Danforth	McCain	Thurmond
Dole	McConnell	Wallop
Domenici	Murkowski	Warner
Durenberger	Nickles	

NAYS—57

Adams	Fowler	Mikulski
Akaka	Glenn	Mitchell
Baucus	Graham	Moynihan
Biden	Heflin	Nunn
Bingaman	Hollings	Pell
Boren	Inouye	Reid
Bradley	Jeffords	Riegle
Breaux	Kassebaum	Robb
Bryan	Kasten	Rockefeller
Coats	Kennedy	Roth
Cohen	Kerrey	Sanford
Conrad	Kerry	Sarbanes
Cranston	Kohl	Sasser
D'Amato	Lautenberg	Shelby
Daschle	Leahy	Simon
DeConcini	Levin	Specter
Dixon	Lieberman	Wellstone
Dodd	Lugar	Wirth
Exon	Metzenbaum	Wofford

NOT VOTING—5

Burdick	Harkin	Helms
Gore	Hatch	

So the motion to table the amendment (No. 2902) was rejected.

The PRESIDING OFFICER. The Chair recognizes the majority leader.

THE SCHEDULE

Mr. MITCHELL. Mr. President, if I might have the attention of the distinguished Republican leader, for the information of Senators, the Republican leader and I have been meeting over the past 2 days on a regular basis in an effort to agree on a schedule by which the Senate can complete the important business which remains before it in the short time remaining prior to the forthcoming August recess.

As everyone knows, under the current schedule, it is intended that the Senate will begin its recess at the close of business on next Wednesday night.

I have decided following discussions with the distinguished Republican leader, the chairman and ranking member of the Armed Services Committee, and the chairman and ranking member of the Finance Committee, that the manner in which we will be most likely to accomplish our objective is to proceed to the Department of Defense authorization bill upon completion of the Interior appropriations bill and following that the bilingual voting rights bill.

So the order in which we would now proceed would be the Interior appropriations bill, the bilingual voting rights bill, then the Department of Defense authorization bill, and then the urban aid bill which some refer to as the tax bill reported out of the Finance Committee.

It is my hope, although I recognize that most of my expressions of hope in this regard are proven to be overly optimistic, that we can complete action on the Interior appropriations bill during the day today, proceed to the Bilingual Voting Rights Act bill, which I anticipate we can complete in a relatively short period of time, and then at least lay down the Department of Defense authorization bill this evening, if that is possible, then have a full day tomorrow.

Senators can expect very long days with many votes on each day that we are in session during this period because we have this important business to complete and very little time to do it in.

I have not attempted in this statement to identify all of the measures on which we hope to act. There are other matters involving the appointment of conferees, Executive Calendar matters of nominees, and others that we hope to act on, that, indeed, I am determined to act on. But I have identified the principle legislative matters that we will take up, and we will try to work the other in.

There is, in addition, finally, I should say, the possible discussion of the resolution involving the situation in the former Yugoslavia.

So I wanted at this point to make clear to Senators the current status of matters. It remains my intention that we will complete action on the measures which I have described prior to departing on the recess at the close of business, the two largest and, therefore, time-consuming and very important matters, of course, being the Department of Defense authorization bill and the urban aid bill.

Mr. President, I am pleased now to yield to the distinguished Republican for any comments he would wish to make.

Mr. DOLE. I understand there would be no votes on Saturday.

Mr. MITCHELL. That is what we discussed this morning.

It had been my intention that we would be in session on Saturday with votes, but, as all Senators know, if anyone is determined that there not be votes, there will not be any. The only votes that I could make certain will occur would be procedural votes and I do not see any purpose would be accomplished by that.

Mr. DOLE. Mr. President, I do not have any objection to being here on Saturday, but a number on this side, and I have to believe a number on that side, have made prior arrangements. There had not been any notice in time to cancel some of the obligations they have in their home States.

But certainly there are things we might be able to debate on Saturday and maybe even, if amendments were acceptable, take care of some of those, in either the DOD bill or whatever might be pending at that time, or maybe the Bosnia resolution that the majority leader indicated.

What we have been attempting to do on this side is to limit the debate, particularly on DOD where we have the B–1 debate and the SDI debate and the Trident debate year after year, both on the appropriations bill and the authorization bill; same players, same speeches. It is, unfortunately, the same length of time. We would like to reduce that. And I am working with the majority leader on this side to encourage our Members who have amendments to DOD to try to reduce the amount.

Some of us, frankly, are not wild about hanging around until midnight to hear some of our colleagues speak for 2 hours when they could have said it in 10 minutes. So we would prefer not to be here until 11 or 12 o'clock and hear the same speakers each evening.

It is my hope we can cooperate right now with the distinguished President pro tempore to help him finish his bill and then the bilingual bill, and then there is the matter of certain executive nominations that we have not fully agreed upon.

But I would say to the majority leader, we are willing to cooperate in every way that we can and hopefully cooperate with the distinguished chairman of the Senate Armed Services Committee and Senator WARNER on this side and with the chairman of the Finance Committee, Senator BENTSEN, and Senator PACKWOOD, the ranking Republican member of the Finance Committee.

I hope that our colleagues would understand, if we are going to complete all of this work, which is a pretty big order, that we should all work together to try to reduce the length of time we take on each amendment.

Mr. MITCHELL. Mr. President, if I might just comment on the distinguished Republican leader's statement. I share the view that we should be doing all we can to move these matters along and to reduce the length of time. But I want to say that the virus of lengthy and repetitious debate does not begin with the DOD bill.

I used to be a Federal judge, and I am frequently asked what are the differences between proceedings in a courtroom and proceedings in the Senate. There are a great many, most notable of which is that a court has the unilateral authority to cut off repetitious debate. No such authority exists in the Senate and, therefore, repeti-

tious debate is a regular feature of Senate activity.

I share and concur wholeheartedly in the view that we ought not to be repeating arguments on the B–2 and SDI. I will say there are many other subjects on which we have had the same arguments for more than 3 or 4 years, at least 12 years since I have been here, the same arguments by the same people on the same subjects on a regular basis.

Mr. President, I would like to consult with the distinguished Republican leader for a moment.

I wonder if I might suggest the absence after quorum.

Mr. BYRD. Not at the moment, if I may ask the distinguished majority leader. I want to make a few remarks.

Mr. MITCHELL. Please do so.

Mr. BYRD. Mr. President, there is a way to shut off repetitious debate, and that is to move to table. And if the Senate will vote to uphold tabling motions, we can shut off some repetitious debate here.

There are 20 amendments that are on the list that can be called up. The Senate agreed to limit the list to 20 amendments last night.

We have been on this bill for 2 hours and a half and we have not disposed of a single amendment. There was a motion to table the amendment by the distinguished Senator from Georgia [Mr. FOWLER] and the Senate did not vote to table that amendment. So now there will be an amendment to the amendment. And I hear talk that there will be extended debate if this amendment is not disposed of and that the only way to get rid of this amendment, maybe the only way, is to invoke cloture. That is what I am hearing.

As I have indicated already, this bill, this appropriations bill, in my judgment, attracts more legislative amendments than does any other appropriations bill. And so we were on it all day yesterday. And the problem with legislative amendments, one of the problems, is they are controversial here and then we go to conference and they are controversial there.

I have to say to my colleagues that practically all, if not all, of the members of the Appropriations Committee have been very considerate during the markup and reporting of bills. They have elected not to have long debates on legislative amendments during the markup. They have recognized, if there is going to be a debate on the amendment on the floor, there is no point in having it twice, in the committee and on the floor.

And so I urge Senators to pay attention to what they are voting on, and take into consideration the fact we have to get this bill finished. We ought to finish it today.

And what we are doing is driving us right into a Saturday session. That is what is going on here.

Mr. STEVENS. Will the Senator yield?

Mr. BYRD. Yes, I yield.

Mr. STEVENS. Mr. President, I deeply regret being at odds with my good friend from West Virginia. For 12 years I have joined him in managing this particular bill, the Interior appropriations bill. But this Senator is literally offended, now, by the process we are going through, because some of us lose our rights when these amendments are offered to an appropriations bill.

If this was a separate bill coming out of the committee, the Energy Committee, it would be subject to a motion to proceed. It would be subject to debate. And it would be subject to the rights of any Senator to have extended debate on the bill itself.

I cannot believe that we should adopt a procedure that gives notice to a Senator that all he has to do to avoid a motion to proceed, to avoid cloture on a bill, is to offer an amendment on the appropriations bill and because of the urgency to pass the appropriations bill the rights of other Senators will automatically be eliminated; not dealt with at all fairly.

This Senator intends, regretfully, to offer a series of amendments to this amendment, to demonstrate the amendments that would be offered if it was a legislative proposal. They are being drafted now. It is not a threat. It is a promise.

This amendment should not be on this bill. And I am perfectly willing to face the Senator from Georgia on a legislative proposal and we will have our debate. We will have our cloture. And we will see what happens to the rights of the public land States. We do not have, standing alone, enough Senators to withstand cloture on any public land issue.

I do not know if the Senate knows that. There are but 17 States that have public lands. And under the circumstances, we face a fight every time we come out here with this bill.

I have just asked the Parliamentarian, could be protect ourselves on the point of order on legislation on an appropriations bill. Unfortunately, because of the current situation, that is probably not there any longer, anyway.

So the only protection we have to see to it the Senate considers the amendments we would offer to this amendment if it were presented as a bill from the committee is to present them now.

I have urged those of us who are affected by this legislation to do so.

I would urge the Senator from Georgia to take it down. I would consent the bill be placed on the calendar, and let us face it as a legislative proposal. But I am not going to permit the loss of rights to the small States of this Union, for those to be abrogated by a procedure that violates rule XVI in the beginning.

This is going to be a long day, I say to my friend from West Virginia. I hope I do not try his patience. But I intend to be sure the rights of our State are protected here on the floor of the Senate.

I, unfortunately, have to state that. Again, we have had amendments that we disagreed with that have been relevant to a provision in the House bill in the past. These amendments we are seeing this year are not relevant to any provision in the House bill at all. They are from an agenda that—I do not know where they came from. They are not voted out by the Energy Committee. They were not even taken up by the Energy Committee that has jurisdiction over this bill.

I say to my friend, I hope I do not try his patience, or that of the Senator from Oklahoma. But I think I know the extent of my rights, and I am going to pursue them.

Mr. BYRD. Mr. President, the distinguished Senator is not trying my patience. I am simply urging the Senate to pay attention to what it is voting on when Senators come to the floor. If we are not able to table some of these legislative amendments, we are going to be here until midnight tonight, and be back on the bill tomorrow. And we are driving this Senate right into a Saturday session.

These are legislative amendments. They ought not be on the appropriations bill under the rules of the Senate. Senators have a right to offer their amendments, but there are also rules that provide against legislation on appropriations bills: rule XVI.

I will have a discussion of that a little later today on the floor, when we have better attendance.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia has the floor.

Mr. BYRD. I wonder if I might ask the Senator who is preparing to offer a second-degree amendment if we could get an agreement on the second-degree amendment? Who is offering this?

I yield to the majority leader.

The PRESIDING OFFICER. The Senate majority leader.

UNANIMOUS-CONSENT AGREEMENT

Mr. MITCHELL. Mr. President, I now ask unanimous consent that the Senate proceed to consideration of S. 3114, the Department of Defense authorization bill, upon the disposition of H.R. 4312, the Bilingual Voting Rights Act.

Mr. BYRD. Mr. President, reserving the right to object; what is this?

Mr. MITCHELL. The agreement under a prior order is that upon the disposition of the Interior appropriations bill, the Senate will take up the Bilingual Voting Rights Act.

This seeks to obtain the Senate's consent to proceed to the DOD authorization bill after completion of the bilingual voting rights bill.

Mr. BYRD. The Senator does not anticipate this is going to take much time, at this juncture?

Mr. MITCHELL. This will not take any time, Mr. President. This merely sets up the order of business in the manner which I earlier described.

We will finish the Interior bill. Then we will do the Bilingual Voting Rights Act. Then we will proceed to DOD authorization.

Mr. BYRD. I have no objection, Mr. President.

Mr. STEVENS. Reserving the right to object, and I do not object, does that contemplate a Saturday session for that Bilingual Voting Rights Act? Is that the concept?

Mr. MITCHELL. I had hoped we could finish the Bilingual Voting Rights Act this afternoon, after we finish this bill.

Mr. STEVENS. I see.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The Senator from West Virginia has the floor.

Mr. BYRD. Mr. President, I understood that a Senator was going to offer an amendment to the amendment.

Is it agreeable to have a time limitation?

Mr. FOWLER addressed the Chair.

The PRESIDING OFFICER. Does the Senator yield?

Mr. FOWLER. Will the Senator from West Virginia yield.

Mr. BYRD. Yes, I yield.

Mr. FOWLER. This Senator, as always, would be delighted to enter into a time agreement.

But may I beg the indulgence of a minute on the Senator's time to respond to my friend from Alaska?

Mr. BYRD. Surely.

Mr. FOWLER. One of the reasons the Senator from Alaska does not have the point of order that he wished to raise is because, just a week and a half ago, he supported a motion overturning the ruling of the Chair that, in the D.C. appropriations bill, on a matter dealing with assault weapons and home rule in the District of Columbia, there was a point of order of legislation on an appropriations bill.

The Senator from Alaska voted to overturn the ruling of the Chair.

We see this often, as everyone knows. What is sauce for the goose is not sauce for the gander.

But the Senator from Alaska helped make this bed, and now he has to lie in it.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, I hope we do not have to lie in that bed very long. And I am going to raise that issue later today; I hope when we have a larger audience here in the Senate.

Can we get an agreement on this?

Mr. CRAIG. Mr. President, I am prepared to lay down that amendment in the second-degree, and I would suggest the cosponsors, most of them, are here on the floor.

We have debated this issue at length. This is a modification that streamlines the process. I would think a total of 30 minutes would be adequate, equally divided.

Mr. BYRD. Mr. President, I make that request, that there be 30 minutes equally divided on the amendment which will be offered by Mr. CRAIG—I assume that Senators know what the amendment does—30 minutes to be equally divided between Mr. CRAIG and Mr. FOWLER.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The Senator from Idaho.

Mr. BYRD. Mr. President, I thank all Senators.

AMENDMENT NO. 2903 TO AMENDMENT NO. 2902

(Purpose: To modify the procedure for appeals of decisions of the Forest Service)

Mr. CRAIG. Mr. President, I send an amendment to the desk and ask for its immediate consideration. I offer it as an amendment in the second degree.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Idaho [Mr. CRAIG], for himself, Mr. DECONCINI, Mr. GORTON, Mr. STEVENS, Mr. DOMENICI, and Mr. BURNS, proposes an amendment numbered 2903 to amendment No. 2902.

Mr. CRAIG. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

In lieu of the matter proposed to be inserted, insert the following new section:

SEC. . FOREST SERVICE APPEALS.

(a) IN GENERAL.—In accordance with this section, the Secretary of Agriculture shall modify the procedure for appeals of decisions of the Forest Service.

(b) RIGHT TO APPEAL.—Not later than 30 days after the date of issuance of a decision of the Forest Service, a person who was involved in the public comment process for the underlying decision may file an appeal.

(c) DISPOSITION OF APPEAL.—

(1) INFORMAL DISPOSITION.—

(A) IN GENERAL.—Subject to subparagraph (B), a designated employee of the Forest Service shall offer to meet with each individual who files an appeal in accordance with subsection (b) and attempt to dispose of the appeal.

(B) TIME AND LOCATION OF MEETING.—Each meeting in accordance with subparagraph (A) shall take place—

(i) not later than 15 days after the date of filing of the appeal; and

(ii) at a location designated by the Chief of the Forest Service that is in the vicinity of the lands affected by the decision.

(2) FORMAL REVIEW.—If the appeal is not disposed of in accordance with paragraph (1), an appeals hearing officer designated by the Chief of the Forest Service shall review the appeal and recommend to the official responsible for the decision the appropriate disposition of the appeal. The official shall decide the appeal.

(3) TIME FOR DISPOSITION.—Disposition of appeals under this subsection shall be completed not later than 30 days after the date of filing of the appeal.

(d) STAY.—Unless the Chief of the Forest Service determines that an emergency situation exists with respect to a decision of the Forest Service, implementation of the decision shall be stayed during the period beginning on the date of the decision and ending on—

(1) if no appeal of the decision is filed, 30 days after the date of filing of the appeal; or

(2) if an appeal of the decision is filed, the date of disposition of the appeal under subsection (c).

Mr. CRAIG. Mr. President, this is an amendment to the FOWLER amendment that would establish a streamlined appeals process that speaks to the concerns of the Senator from Georgia and others, as it relates to the right of the citizen to participate in the decisionmaking process of the U.S. Forest Service.

This is an amendment that is cosponsored by my colleague from Arizona, Senator DECONCINI; Senator GORTON of Washington; Senator STEVENS of Alaska; Senator BURNS of Montana; and also Senator DOMENICI of New Mexico.

This is a work product of a blue-ribbon committee in Arizona that Senator DECONCINI was a direct participant in, of a broad base of citizens and interest groups, along with the U.S. Forest Service.

As the Senator from Georgia knows—because this is not, as he has said, just a State or regional issue—it is, in fact, a national issue of national concern, and that is why this administration and the chief of the Forest Service, in proposing new regulations, has attempted to address the issue and has done so, of course, stimulating the reaction of the Senator from Georgia.

This amendment would put in place a process that, first, the person making the appeal must be involved in the underlying decisionmaking process. As the notice goes out for the action to be taken, a notice well publicized by the Forest Service, that individual would have to become involved in the process or, as we would refer to it, establish standing. In other words, not just any individual after the fact could file an appeal from across the country, but if that individual had a legitimate concern, and most appeals are legitimate, and was participating in it and the decision was made which that individual could not agree with, then, because he or she had participated in the first instance, they would have standing. This would eliminate bad faith, frivolous arguments that we have heard and would allow them the right to appeal.

Second, the appeal would have to be made within 30 days of the offending decision; in other words, the time lines that have consternated this process for so long would begin to be tightened under this amendment. They have 30 days in which to file the appeal. Once that was accomplished, this provision would provide that the Forest Service would offer to meet personally with that individual who seeks the appeal to try to resolve the appellate's concern. That meeting would be face to face, or

encouraged to be so, on the site of the appeal or where the action was to take place. They would try to work out their differences, face to face, person to person, trying to resolve the problems that resulted in the appeal in the first place. Once that is accomplished, maybe a resolution would arise at that point in time. But if it did not, if it were not immediately resolved through the face-to-face process, another 15 days would elapse before, of course, a final decision would be made.

The provision makes sure that a trained, disinterested person is involved in the matters of making that decision. A certified hearings appeals officer would hear the facts, if an agreement could not be arrived at, and make recommendations to the responsible deciding officer, which usually is the regional forester, in other words, the same line or chain of process that goes on today under the appeals process but much tightened by the timeframe involved. Once that is done and a decision made, that ultimately will be the decision and the appeal process.

If the appellant disagreed with that decision, they can obviously go to court, as they can today. No one, including this administration, in their proposed streamlined process would attempt to or desire to close the door of using the judicial process, but it does establish standing, it does establish a tight timeframe for the process, and it brings these parties face to face, together, in trying to work out the problems. In other words, the long-range process of mail is discontinued as we work person to person to resolve this. This is the text of the amendment. I think it simplifies, clarifies, and most certainly streamlines a process that has been very difficult; very, very costly; and extermely time consuming.

I retain the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. FOWLER. Mr. President, I yield such time as I use.

The PRESIDING OFFICER. The Senator from Georgia, [Mr. FOWLER].

Mr. FOWLER. Mr. President, let me discuss the amendment with my friend from Idaho. Obviously, we have just seen this amendment. I do not want to go over old ground, but in the rights of appeal section, which is on the first page of the proposal, "Not later than 30 days," et cetera, "a person who is involved in the public comment process for the underlying decision may file an appeal."

I believe I am correct in stating to the Senator that, first of all, the only public comment process is in my amendment. Without my amendment, there is no public comment process. The Forest Service, I understand from our hearings, has a proposal for a public comment procedure and process, but it is not in the law right now. If by any chance the Senator's amendment is adopted, it will not be operable since there is no public comment in the law.

Mr. CRAIG. Will the Senator yield?

Mr. FOWLER. Of course, I will yield on the time of the Senator from Idaho.

Mr. CRAIG. There is a public comment period. The Senator from Georgia is wrong. It is the NEPA process that leads to the decision of the Forest Service that might be appealed. So there is an open public process already in law that the Forest Service follows, and that is the one that is referenced in this amendment.

Mr. FOWLER. Mr. President, I just beg to disagree with the Senator. There is not that process dealing with project-level decisions, which is the heart of this debate. We are not talking about the larger period on the Forest Service plans; we are only talking about Forest Service decisions.

But let me reclaim my time having made what I believe is a key argument. If this amendment were adopted, we would be back to ground zero because, as drafted, it cannot be used.

But this question of standing is one that is very important, and I certainly will not go over this morning's debate except simply to say that many of these presale public comment periods take place, as the Senator from Idaho knows, as much as 2 years in advance of the actual sale. Those of us in America who own the public lands move around, our jobs change. If there was a predecision comment period in the Boise National Forest, in Senator CRAIG's home State of Idaho, I might not move to Idaho to be on the ground to make a public comment in person until a year after that decision has been made.

What do I do? This is my forest. We cannot limit the right of a citizen of the United States to have a part in the decision having to do with their forest.

It is also very interesting. It says that the chief of the Forest Service is going to decide the time and location of the meeting—on page 2. I am a working stiff in Idaho. I pack my lunch pail and I go out to earn my living and pay my taxes, and all of a sudden, there is a decision on the Oconee National Forest and the Chattahoochee National Forest in Georgia, and I see that this is in violation, or I sense it is in violation, of some serious economic laws on the books. I sense that it may be an unwarranted subsidy to a private timber company. How am I supposed to get to the meeting called by the chief of the Forest Service in Georgia if I am in Idaho? The chief of the Forest Service gets to get on a taxpayer-financed plane with his whole contingent of staff, all paid by the taxpayers of the United States, and fly to Georgia to hold the meeting. What does the working stiff in Idaho do? How is he supposed to get there? What if the meeting happens to be when he is supposed to be at work earning his living for his family?

I say to my colleagues, this amendment is a backdoor way of undoing what we just did. And that is not to question the motive of my friend from Idaho, who is a serious legislator and is trying to work out these problems. I give him credit. But the underlying philosophy is what we cannot get in our heads around here.

Every citizen of the United States has equal standing under the law to challenge a decision on the laws of the United States regardless of where he lives.

This is the national legislature, ladies and gentleman. This is not the Atlanta city council or the Boise, ID, City Council dealing with private property. This is the U.S. Congress. These are public lands. A citizen who lives in Idaho has an absolute right to challenge how his lands are being used in Georgia or Alabama or Florida. So this attempt to knock out anybody who does not happen to be living down the street when a public comment period is being held, if there was a public comment period in the law, which there is not under the Craig amendment, is unconstitutional; it is undemocratic, and I go so far as to say it is un-American because we are Americans. We are not Idahoans here; we are not Georgians; we are not Alabamans; we are Americans. These are our lands. We have a right to challenge.

I retain my time.

The PRESIDING OFFICER. Who yields time? The Senator from Idaho.

Mr. CRAIG. Mr. President, let me clarify a few points that I think the Senator from Georgia has exaggerated on just a little bit.

I do not believe the chief of the Forest Service flies down to Georgia for an appeal. I think the line officer in Georgia who made the decision is the individual who is going to participate at that level with that citizen who might be concerned.

We do have a right to make decisions, and the public has a right to be involved. This is a maximum public input process. I think that is important to be said. It is very democratic. I think it is something that all of us recognize streamlines but allows public participation.

I yield 5 minutes to my colleague, the Senator from Arizona.

Mr. DECONCINI. I thank my friend from Idaho.

Let me say to my friend, the Senator from Georgia, the six-pack American in Idaho who has an interest here is not precluded by this administrative procedure of filing suit, because it is taxpayers funds that he can contest the implementation. But I do not think the Senator from Georgia would have any real quarrel with the location to be designated in the vicinity of where the land is affected. That is what is said on page 2 under B:

Time and Location of Meeting. Not later than 15 days after the date of filing of the ap-

peal; and at a location designated by the Chief of the Forest Service that is in the vicinity of the lands affected by the decision.

It seems to me that that is really a bogus argument. What we are talking about here is not throwing the baby out with the bath water. We have a problem and I think the Senator from Georgia knows that. The amount of appeals that are filed, many of them are frivolous appeals. That is all we are interested in getting to. Only 6 percent of the appeals were overruled. So a very small amount of appeals are considered to have validity.

Now, the court system or the administrative system is not supposed to be abusive, and that is what has happened here. My friend from Georgia wants to go back to the old school where anybody can file an appeal. If you want to bring a lawsuit, that is one thing. But why should someone in Arizona wake up in the morning, have a call from a friend in Georgia who says, you know, they are going to issue this forest plan, and the guy in Arizona says well, I am going to appeal that.

That is not good government. That is not what the first amendment to the Constitution guarantees citizens. Somebody should have some interest in this.

And so how does it work? Under this amendment offered by the Senator from Idaho they have to have some standing. They have to be part of the process. I contend the Senator from Georgia is incorrect. The appeal process is not ruled out by this amendment. So there has to be the public process.

Once the public process is instituted, the Senator's amendment indicates that you have to be involved in this decision. So if you filed a letter from Arizona and said look, I think this is bad public policy, then you are involved. But if you are just out in the blue and all of a sudden—have nothing to do with this and never participate in the public process, then chances are you are going to be considered not involved.

The amendment of the Senator from Georgia that we just passed has no bearing, no determination as to having any standing. Anybody can just come in. I do not like this. You cannot open this to 260 million people who want to just file any time they feel, well, my gosh, I just do not like the Government's decision. You have to have some basis.

Now, the Craig-DeConcini and others amendment requires that the appeal be made within 30 days of the period. The Fowler amendment that we just passed is 45 days. So we are restricting it even more. The Senator should be applauding us instead of opposing this amendment.

The Craig-DeConcini amendment provides that the Forest Service attempt to resolve it in a face-to-face confrontation, discussion, negotiation. The Fowler amendment goes back to the old way that there is none.

I am not saying that the Forest Service supports this, because I do not think they probably want to get down there and talk about it. But they should. And the Senator has made that very clear, that if you have—in my opinion, at least—some basis, you should have a chance to be confronted and talk about it. The amendment offered by the Senator from Idaho provides for a formal review of an appeal by a hearing officer.

I ask the Senator for 1 more minute, if he would.

Mr. CRAIG. I yield 1 more minute to the Senator from Arizona.

Mr. DECONCINI. To me that is a very legitimate thing to have, and the amendment of the Senator from Georgia has nothing there.

The Craig amendment provides that the appeal must be decided within 30 days. Again, the Fowler amendment that we adopted here puts 45 days in. We are restricting it even more. The Craig amendment requires that any stay be lifted after the 30-day period, whenever the decision is made. Fowler has 45 days.

Nobody is barred by this to go into court. If you do not like the decision by the hearing officer and the ultimate decision, you still can go to the court, just as you can today. This is a reasonable approach that attempts to only address the problem of frivolous appeals. But it also tightens the period of time. The Senator from Georgia ought to be on our side on this because he has spent a lot of time making sure that people do not get put off, do not get overlooked. They are considered under this amendment.

I thank my friend from Idaho for offering the amendment.

The PRESIDING OFFICER. Who yields time?

Mr. CRAIG. Mr. President, may I ask how many minutes I have.

The PRESIDING OFFICER. The Senator from Idaho has 3 minutes, 22 seconds; the Senator from Georgia 7 minutes, 54 seconds.

Mr. CRAIG. Does the Senator from Georgia wish to use some of that time?

Mr. FOWLER. I will use some of it and let me have the last say.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. FOWLER. I yield myself 3 minutes.

Let me respond to my greatly respected friend from Arizona, and especially that respect extends to the quality of his legal mind and his legal experience. Since he was not able to be here earlier in the debate this morning, I do wish to inform him that the Secretary of Agriculture is actively supporting measures to bar public access to the court system. I quote Secretary Madigan of the Agriculture Department from last month.

Mr. DECONCINI. If the Senator will yield.

Mr. FOWLER. Please.

Mr. DECONCINI. On his time, because it will take 30 seconds.

I am aware of that, and I do not support that. I did listen to the Senator's eloquent debate, and I think he is right. I agree that ought not be the case, so that is really not the issue.

Mr. FOWLER. I knew the Senator would agree. I do not know he was informed. I knew he would agree if he were informed, and I thank the Senator. But that is the problem with the Senator's statement, that there is always the remedy in the courts. Not under this administration. This administration is actively trying to bar the public access to appeal these decisions to the courts. The Secretary of Agriculture—I quoted him earlier:

We could manage better if we were free from interferences of the Federal courts. We urge Congress to do that expeditiously.

So they are trying to cut off the public not only to have an appeal but to do it in the courts.

Also appealing to the fine legal mind of the Senator from Arizona, I am sure he would never support for instance a proposal that required only people with Arizona license plate to be able to visit the Grand Canyon. Why would the Senator from Arizona never support such an outrageous proposal? Because the Grand Canyon belongs to the people of the United States, all the people of Georgia, of Florida, of Alabama. It is their public park. They have standing wherever they live under all of our laws to go there.

I want to say to both Senators that, yes, the formal review section of your proposal I could agree with. I think it is helpful and proper. But the reason this amendment has to be opposed is on the standing issue. You cannot limit the right of a citizen of the United States to have an effect on a matter concerning his lands.

Mr. DECONCINI. Will the Senator yield for a question? It will be a very short question.

Mr. FOWLER. I am glad to yield.

Mr. DECONCINI. Would the Senator believe someone should be a participant, and does the Senator believe that a nonparticipant in this process, anybody, should have the right to file an appeal? Is that the Senator's position? I just want a yes or no.

Mr. FOWLER. Yes. That is the Senator's position. Let me tell you why.

We cannot keep them from filing a frivolous, if I can have the Senator's attention, appeal but the Forest Service under the law has the right to throw out all appeals that are not based open on merit. They do not have to even make that decision. They can do that.

But the clean answer to the question is again—we are back to philosophy—if I am a citizen of Georgia, and there is

a decision affecting the public lands in Arizona, those are not Arizona lands. I have as much stake, and I have as much interest, and I have as much ownership of the Grand Canyon as does any citizen of Arizona. It would be wonderful if we had a world where everybody could get together 2 years in advance for a public comment period, and all sit down face to face, an ideal world, you and I would, and agree on that. I know the Senator from Idaho would. But the problem is we cannot do that.

Mr. DECONCINI. Will the Senator yield for another quick question? Does the Senator believe that there is any merit to reduce frivolous lawsuits, frivolous appeals? If so, does not this rally address that?

Mr. FOWLER. No. I wish it did. I would be glad to entertain something that did not have the standing question, if you answer to frivolous appeals, the Senator from New Mexico, and the Senator from Idaho, and I have been trying to do that for a long time. You do not know. Frivolous is frivolous. So you have to deal with it when you get it.

I reserve the remainder of my time.

Mr. DECONCINI. Will the Senator yield 20 seconds?

Mr. President, I ask unanimous consent that the Arizona blue ribbon panel report of Mr. Dave Jolly as well as the appeals system be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

ARIZONA BLUE RIBBON TASK FORCE,
October 18, 1991.

Mr. DAVE JOLLY,
Regional Forester, Southwestern Region, USDA—Forest Service, Albuquerque, NM.

DEAR MR. JOLLY: The enclosed, "Findings and Recommendations of the Arizona Blue Ribbon Task Force," is our report to you in response to our charter of March 28, 1991. It is the culmination of the process of information gathering, discussion, and analysis as we listened to what the people of Arizona had to say about the management of their National Forests.

The Task Force has confirmed that there are major public concerns about implementation of National Forest Land Management Plans (LMPs). These concerns are centered around whether or not an acceptable balance between resource values and uses is being achieved on Arizona's National Forests and whether the values and uses being implemented are the same as those envisioned during the creation of the LMPs.

There are impressions that the rural economy of Arizona is threatened and that the overall health of Arizona's diverse natural resources is declining. A myriad of contributing factors are thought to be the causes, including human presence and intervention in forest ecosystems; years of fire control; the publics' intolerance of multiple-uses other than their own; and an increasing population that causes an even greater demand for valuable renewable resources.

The accumulation of all these factors and impressions has intensified public scrutiny of Forest Service land management activities.

The result of the group's lengthy and unique process is a report that captures important insights about both public and employee attitudes and perceptions toward the Forest Service. It offers an array of information: perceptions, criticism, reinforcement, general recommendations, and specific suggestions for change.

Words alone cannot adequately describe the depth of concern, intensity of feeling, and the amount of frustration we encountered as we listened to dozens of people from all corners of the state. Our discussions were often spirited as we reached new levels of understanding and commitment to our task, and found common ground on which to base our final recommendations.

We offer our report as a guide and as a challenge. It is our hope that you will embrace the recommendations and move wholeheartedly ahead, along with the governor, your cooperators here in Arizona and top officials in Washington, D.C., to turn our ideas into reality—with firmness, professionalism, and credibility.

We offer our cooperation as you review the report and make decisions about what to do next; and stand ready to respond to any questions you may have. Thank you for the opportunity to serve on the Arizona Blue Ribbon Task Force.

Sincerely,

Arizona Blue Ribbon Task Force

Betty Drake, Private Consultant, Scottsdale, AZ.

Lawrence D. Garrett, Dean, School of Forestry, Northern Arizona University, Flagstaff, AZ.

Dexter Gill, Director, Navajo Nation Forestry Department, Window Rock, AZ.

M. Jean Hassell, Arizona State Lands Commissioner, Phoenix, AZ.

Charles Huggins, Secretary-Treasurer, Arizona State AFL-CIO, Phoenix, AZ.

James L. Kimball, Forest Supervisor, Tonto National Forest, Phoenix, AZ (Chairman).

Kathy J. Nelson, Mothers for Clean Water, Tempe, AZ.

David W. Ogilvie, Jr., Silver City, NM.

A. Lynn Ruger, Morenci, AZ.

Merri Schall, Retired Professor, Arizona State University, Pine, AZ.

Duane L. Shroufe, Director, Arizona Game and Fish Department, Phoenix, AZ.

Pete Shumway, Chairman, Navajo County Board of Supervisors, Taylor, AZ.

Dennis Silva, Mayor, Town of Springerville, Springerville, AZ.

James S. Whitney, Retired, Scottsdale, AZ.

Elizabeth Woodin, Arizona Game and Fish Commission, Tucson, AZ.

Karen Yarnell, Flagstaff, AZ.

APPEALS SYSTEM: "FULL RECOURSE—ALONG WITH ACCOUNTABILITY"

FINDINGS

Currently, National Forest management processes can be brought to a halt with little effort and no accountability, and trivial appeals are being dealt with the same as serious ones. Appeals and/or the threat of appeals can stop production of resource dependent businesses even when sound resource decisions are being made. S&Gs are sometimes used for negotiating to prevent appeals, rather than to meet resource needs.

Issue: The appeals system, as developed and implemented by the Forest Service, is not allowing the agency to properly manage National Forest Lands. The system is not a law, but an administrative procedure, yet it has developed into a quasi-legal forum.

RECOMMENDATIONS

The Task Force finds validity, fairness, and justification for the appeals process, provided that the appellant is held accountable and responsible for the actions he/she takes in availing him/herself of this opportunity to participate in a grievance process. It is a right of the public, industry, and agencies to appeal plans and decisions.

Implement a pilot program in which any appellant would have to have been actively involved in the IRM process in person or in writing prior to the formal appeal. In this way, sufficient input and negotiation would have taken place on potentially contested issues with the ultimate goal of precluding the need for an appeal of a plan or decision. Once an appeal has been filed, the recommended procedure would be as follows:

Appeal Request: The individual/group submitting an appeal to the responsible official must do so in writing within 30 days of the decision.

IRM Review: The IRM team must meet with the appellant in person, review the request and try to resolve the concern. This meeting must be arranged at a convenient location and time for both appellant and IRM team. Should the appellant fail to participate in this process, the appeal would be considered invalid. If the IRM team review process is unsuccessful in gaining resolution, the appeal request would then be reviewed by a certified appeal hearing officer.

Hearing Officer Review: The officer, acting as an outside reviewer of the appeal, would have primary responsibility to determine if IRM, NEPA, NFMA, and the associated LMP direction were being followed. The hearing officer's recommendation would be given to the responsible official.

Decision: The responsible official would then either uphold the appeal and remand the decision or deny the appeal and uphold the decision.

Time Frame: The IRM team review, the hearing officer review, and the responsible official decision will take no more than 30 days to complete. A stay may be no longer than 30 days from the day the appeal was filed. (Regional Forester, Congressional Delegation, Chief, Secretary)

Citizen Complaints: In addition to the appeal/hearing process, any individual has the right to complain about a decision. The complaint would be in writing to the responsible official and his/her superior. The process would be very informal and should not be construed as another type of appeal/hearing process. The complaint must be answered and should be utilized as an opportunity for the Forest Service to improve public/agency relationships. There is no specific deadline for filing complaints, but they must be answered within 30 days. (Regional Forester)

Mr. CRAIG. Mr. President, I yield 2 minutes to the Senator from Montana.

Mr. BURNS. Mr. President, listening to the colloquy of my friend from Georgia and my friend from Arizona, I suppose what we are trying to prevent here, when we say frivolous is frivolous whenever somebody, say from Montana, files an appeal on such actions in the Forest Service in Georgia, not living in Georgia, just because it comes up on the computer screen; that the sale is made in the Chattahoochee down in Georgia, he feels that probably Georgia should not cut anyone on public lands. So he files a suit.

This amendment says he has to go down there and file the appeal, and appear down there. He has to bring some kind of credibility to the table, and he

has to do it in person in order to make this appeal stick. That is the only thing we are doing here. We are squeezing down the time a little bit, ratcheting it down, so a decision can be made so we can get on with life.

A while ago I tried to make the argument that even in a 10-year planning stage we have to plan in order to manage these public lands or manage any renewable resource with any kind of sanity and efficiency for the public good.

Basically, that is the only thing this thing does. It says you come down, you look at our practices and what we want to do, if you do not like them, you file the appeal. But you have to appear yourself. That is all we are asking.

If my constituent in Montana does not want to make the trip to Georgia to file his appeal and make his argument, then it should be thrown out as frivolous. I am sure that is what we are trying to get rid of. Between 1980 and 1990, the appeals went up from 133 to 1,134. Half of those were administrative appeals, and nobody, especially this administration, bars anybody from judicial rule of the Federal courts. That is taken out of context. I think it is very unfair because nobody under this Constitution would even attempt to try to do that.

I thank the Chair. I yield the floor.

Mr. BAUCUS. Mr. President, I rise in support of the amendment offered by the Senator from Idaho.

I believe this amendment includes the mechanisms necessary to reform the legitimate problems that currently exist in the Forest Service Appeals Program.

As I stressed in my statement earlier today, there should be a process in which citizens acting in good faith may obtain administrative review of Forest Service management decisions. At the same time, there must be a beginning, a middle, and an end to administrative review.

The Craig amendment heads in the direction of establishing these objectives.

I am encouraged that this amendment requires citizen involvement as a prerequisite to gaining access to administrative review. The inclusion of informal dispute resolution is another positive addition to the Forest Service appeals program.

I remain cautious, however, in my support of this amendment as drafted. It contains many ambiguities and uncertainties that need to be resolved in order to achieve effective reform of the appeals system. So while I will support this amendment because of the several positive, reform-oriented ideas that it contains, improvements are needed in several areas. I intend to consult with the conferees on this bill to give them my views on how we can craft a sound, workable, definitive appeals process.

Thank you, Mr. President. I yield the floor.

Mr. CRAIG. Mr. President, how much time do I have?

The PRESIDING OFFICER (Mr. KERREY). Fifty-three seconds.

Mr. CRAIG. How much time does the Senator from Georgia have?

The PRESIDING OFFICER. Two minutes thirty-nine seconds.

Mr. FOWLER. How much time does the Senator from Idaho have?

The PRESIDING OFFICER. Fifty-three seconds.

The Senator from Georgia has 2 minutes 39 seconds.

Mr. FOWLER. I am glad to give the Senator from Idaho half of my time. We will divide the remaining time equally.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 2903, AS MODIFIED

Mr. CRAIG. Mr. President, the Senator from Georgia has said that there is no tying to a public comment period. Therefore he has said it is not within the law. It is within the law. It is within the process. It is the current process. It makes reference to, on line 9, "the public comment process" which is referenced in NEPA, which is standard law and we understand that. So you cannot say hypothetically it does something that it does not do.

I think the record is very clear that we referenced the process that is current, that the public understands today. That is the public comment process. I think it is very important to understand.

Standing is a valid issue that is used in almost every other appeals process in this country, that you just do not walk in off the street. You become involved. You have a reason to become involved because you see something is wrong. And you are made aware of the error or the wronging of this process because of the public comment period, because of the notification, because of the standards of process that the Forest Service now uses under NEPA.

It is not just for the little project. We know at the hearing process, we know about the public comment period, we know about the printed notification in the paper. That is all standard. That is what this is addressing. That is part of it.

Let me also ask for a clarification of language on page 3, line 11, if the Senator from Georgia would note this, where it says: "after the date of the filing of the appeal". It really means, after the date of the issuance of the decision.

I ask unanimous consent I be allowed to modify that language.

The PRESIDING OFFICER. Without objection, it is so ordered.

Without objection, the amendment is so modified.

The amendment (No. 2903) as modified, is as follows:

In lieu of the matter proposed to be inserted, insert the following new section:

SEC. . FOREST SERVICE APPEALS.

(a) IN GENERAL.—In accordance with this section, the Secretary of Agriculture shall modify the procedure for appeals of decisions of the Forest Service.

(b) RIGHT TO APPEAL.—Not later than 30 days after the date of issuance of a decision of the Forest Service, a person who was involved in the public comment process for the underlying decision may file an appeal.

(c) DISPOSITION OF APPEAL.—

(1) INFORMAL DISPOSITION.—

(A) IN GENERAL.—Subject to subparagraph (B), a designated employee of the Forest Service shall offer to meet with each individual who files an appeal in accordance with subsection (b) and attempt to dispose of the appeal.

(B) TIME AND LOCATION OF MEETING.—Eech meeting in accordance with subparagraph (A) shall take place—

(i) not later than 15 days after the date of filing of the appeal; and

(ii) at a location designated by the Chief of the Forest Service that is in the vicinity of the lands affected by the decision.

(2) FORMAL REVIEW.—If the appeal is not disposed of in accordance with paragraph (1), an appeals hearing officer designated by the Chief of the Forest Service shall review the appeal and recommend to the official responsible for the decision the appropriate disposition of the appeal. The official shall decide the appeal.

(3) TIME FOR DISPOSITION.—Disposition of appeals under this subsection shall be completed not later than 30 days after the date of filing of the appeal.

(d) STAY.—Unless the Chief of the Forest Service determines that an emergency situation exists with respect to a decision of the Forest Service, implementation of the decision shall be stayed during the period beginning on the date of the decision and ending on—

(1) if no appeal of the decision is filed, 30 days after the date of the filing of the decision; or

(2) if an appeal of the decision is filed, the date of disposition of the appeal under subsection (c).

Mr. FOWLER addressed the Chair.

The PRESIDING OFFICER. The Senator from Georgia is recognized.

Mr. FOWLER. Mr. President, I allowed that modification, not only out of good will, but because the amendment is fatally flawed. I say to my friend from Idaho, at the conclusion of this, I think when we talk to the Forest Service, he will find that under the present administrative procedures, there is no formal notice and comment period for project level decisions. I believe that will be found to be true.

In light of that, this amendment cannot stand. It is offered as a substitute. If it were adopted, it would undo completely what the body just did in the tabling motion earlier, and it would leave the public, the citizens, with no formal notice and comment period for project level decisions.

I trust that my colleagues will uphold the decision that they made an hour ago. I think it will help the Forest Service immensely to know that we stand on record for a citizen review process that, if not cumbersome, I say with all respect, has worked extremely well.

Mr. President, I move to table the amendment.

Mr. CRAIG. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays are ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from North Dakota [Mr. BURDICK], the Senator from Tennessee [Mr. GORE], and the Senator from Iowa [Mr. HARKIN] are necessarily absent.

Mr. SIMPSON. I announce that the Senator from Utah [Mr. HATCH] is absent due to death in the family.

I further announce that the Senator from North Carolina [Mr. HELMS] is absent due to illness.

I further announce that, if present and voting, the Senator from Utah [Mr. HATCH] and the Senator from North Carolina [Mr. HELMS] would each vote "nay."

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 45, nays 50, as follows:

[Rollcall Vote No. 175 Leg.]

YEAS—45

Adams	Graham	Moynihan
Akaka	Hollings	Nunn
Biden	Inouye	Pell
Boren	Jeffords	Reid
Bradley	Kennedy	Riegle
Bryan	Kerrey	Robb
Chafee	Kerry	Rockefeller
Cranston	Kohl	Sanford
D'Amato	Lautenberg	Sarbanes
Daschle	Leahy	Sasser
Dixon	Levin	Simon
Dodd	Lieberman	Specter
Exon	Metzenbaum	Wellstone
Fowler	Mikulski	Wirth
Glenn	Mitchell	Wofford

NAYS—50

Baucus	Domenici	Murkowski
Bentsen	Durenberger	Nickles
Bingaman	Ford	Packwood
Bond	Garn	Pressler
Breaux	Gorton	Pryor
Brown	Gramm	Roth
Bumpers	Grassley	Rudman
Burns	Hatfield	Seymour
Byrd	Heflin	Shelby
Coats	Johnston	Simpson
Cochran	Kassebaum	Smith
Cohen	Kasten	Stevens
Conrad	Lott	Symms
Craig	Lugar	Thurmond
Danforth	Mack	Wallop
DeConcini	McCain	Warner
Dole	McConnell	

NOT VOTING—5

Burdick	Harkin	Helms
Gore	Hatch	

So the motion to table the amendment (No. 2093), as modified, was rejected.

Mr. STEVENS. Mr. President, I move to reconsider the vote by which the motion was rejected.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The question now recurs on agreeing to the amendment of the Senator from Idaho [Mr. CRAIG].

The amendment (No. 2903) was agreed to.

AMENDMENT NO. 2902, AS AMENDED

The PRESIDING OFFICER. The question now is on agreeing to the Fowler amendment, as amended.

The yeas and nays have been ordered.

Mr. DECONCINI addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. DECONCINI. Does the Senator from Georgia wish to vitiate the yeas and nays?

Mr. FOWLER. Mr. President, I ask unanimous consent to vitiate the yeas and nays on the underlying amendment.

The PRESIDING OFFICER. Without objection, the yeas and nays are vitiated.

The question now is on agreeing to the Fowler amendment, as amended.

The amendment (No. 2902), as amended, was agreed to.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. NICKLES. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Under the previous order, the Senator from Washington [Mr. GORTON] is now recognized.

The Senate will be in order.

Mr. GORTON. Mr. President, I suggest the absence of a quorum.

Mr. BYRD. Mr. President, before the Senator makes that suggestion, I ask the distinguished Senator from Washington if he would be agreeable to a time limit on this amendment?

Mr. GORTON. Mr. President, I say to my distinguished chairman, I do not intend to occupy a great deal of time on this amendment. I do not make any threats about filibusters or additional amendments if this one is not accepted.

I do know there are a fairly good number of Members on this side of the aisle who wish to speak to it. I think there are a significant number of Members on the other side who wish to do so.

I prefer at this point not reach one. After we get a little way into it, I will work with the distinguished chairman toward such a time agreement, when I know who all wants to speak.

Mr. BYRD. Mr. President, I certainly appreciate the distinguished Senator's response.

We have disposed of one amendment, and we started on that amendment at 10 o'clock this morning. So we have been on the bill 3 hours and 50 minutes, and we still have 19 amendments to go, with each of them subject to relevant amendments in the second degree.

I hope we will not talk too long on this next amendment. It has been debated time and time again. At some point, I will move to table, if things get prolonged too greatly.

Mr. ADAMS. Will the chairman yield?

Mr. BYRD. The distinguished Senator on the other side has the floor.

Mr. ADAMS. Mr. President, will the Senator from Washington yield, so I might direct a question to the chairman of the committee?

Mr. GORTON. I yield.

Mr. ADAMS. Mr. President, we would agree to a time agreement. The ones on this side who indicated they wish to speak are Senators ADAMS, CHAFEE, LIEBERMAN, BAUCUS, and MITCHELL. That is all I know who wish to speak, and we will try to fit ourselves into whatever time agreement the chairman might propose, because I agree with my colleague, I think we should proceed with this as promptly as possible, and I hope we can get a time agreement.

Mr. BYRD. Would the Senator be willing to have 45 minutes to a side?

Mr. ADAMS. I would prefer—yes, I would be willing to go 45 minutes to a side.

Mr. BYRD. I leave that in the good hands of the junior Senator from Washington.

Mr. GORTON. I simply say to the distinguished chairman that I hope within a few minutes we will come to a time agreement that is within that range.

Mr. BYRD. Very well. I thank both Senators.

Mr. GORTON. Mr. President, I am making technical changes to the amendment.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

Mr. GORTON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 2904

Mr. GORTON. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Washington [Mr. GORTON], for himself, Mr. PACKWOOD, Mr. CRAIG, Mr. SEYMOUR, and Mr. BURNS, proposes an amendment numbered 2904.

Mr. GORTON. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 67 of the bill, strike lines 9 through 11 and insert in their place the following:

"FUNDING OF FOREST HEALTH IMPROVEMENT PROJECTS.—To meet the forest health emergency now experienced on many of the federal forest lands, the Secretary of Agriculture on National Forest System lands and the Secretary of Interior on public lands shall expend such sums as are necessary within available funds from the salvage sale

fund authorized by section 14(h) of the National Forest Management Act of 1976 (16 U.S.C. 472a(h)) and the salvage sale trust fund within the Bureau of Land Management established by this Act to design and implement forest health improvement projects. Such projects shall employ a combination of multiresource management practices, treatments, and protections. Such projects shall be designed to accomplish the objective of improving forest health through management actions that improve stand density and composition, salvage dead and dying timber, remove or treat sources of infection or infestation, reduce excess fuels, and leave remaining vegetation in a condition designed to increase its opportunity to contribute to a healthy, productive ecosystem. In the execution of such projects, the Secretary of Agriculture and the Secretary of the Interior are authorized to use the authorities in the Knutson-Vandenberg Act of 1930 (16 U.S.C. 576) as amended, the provisions of the National Forest Management Act of 1976 (16 U.S.C. 472a), as amended, the Federal Land Policy and Management Act of 1976 (16 U.S.C. 1701 et seq.), and other applicable law.

"ENVIRONMENTAL ANALYSIS.—Any forest health improvement project found by the Secretary of Agriculture or the Secretary of the Interior to be not inconsistent with the long-term management goals and objectives of a land management plan for the administrative unit in which the activity is to occur shall be deemed not to be a major Federal action significantly affecting the quality of the human environment for the purpose of subsection (C) of section 102(2) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)). The Secretary of Agriculture and the Secretary of the Interior shall establish by regulation a policy providing for categorical exclusions from requirements established pursuant to such section for certain types of salvage based on the extent to which the salvage includes selective thinning, minimal building of new roads, minimum loss of healthy standing timber, and other justifying factors.

"ADMINISTRATIVE REVIEW.—Unless the Secretary of Agriculture or the Secretary of the Interior specifically provide for administrative review, citizens of the United States may seek immediate judicial review of a decision by the respective Secretary to conduct a forest health improvement project in the district court of the United States for the district in which the project is to occur. If the respective Secretary provides an opportunity for administrative review, standing to bring an administrative appeal of a forest health improvement project shall be available only to persons who have raised the issue or issues for which administrative review is sought in written or oral comment submitted during the preparation of the project.

"SPOTTED OWL FORESTS.—Notwithstanding the Forest Service Record of Decision of March 3, 1992, 57 Fed. Reg. 8621 (March 11, 1992), the National Forest Management Act of 1976, and the National Environmental Policy Act of 1969, the Forest Service is authorized to allow salvage timber sales in Habitat Conservation Areas and other suitable habitat for the northern spotted owl on the spotted owl forests in Washington, Oregon and California outside any units of the National Wilderness Preservation System and other areas in which timber harvesting is expressly prohibited by statute, unless such salvage will adversely affect spotted owl habitat as determined by the Secretary of Agriculture.

Mr. GORTON. Mr. President, this amendment, to a more significant degree than the amendments which have preceded it, is about people and about people only. It is about people who have been ignored and abandoned, people who are the innocent victims of sophisticated lobbying organizations. This amendment is about a legal system that is so complicated that it can be and has been manipulated in a direction never contemplated or even imagined by those who wrote the statutes that have since been implemented and interpreted in such a way as to cripple a major national industry, destroy entire communities, and devastate the lives and careers of thousands of hard-working, productive American citizens. This amendment will provide a tiny degree of relief for these people.

To put the matter in perspective, during most of the 1980's, approximately 5 billion board feet per year was contracted for harvest and harvested in Washington, Oregon, and northern California. This year, that number has been reduced to some 400 million, only 8 percent of the cut in contrast to the 1980's. And there are no more timber sales in the pipeline, no more in the pipeline at all in the so-called owl forests of western and central Washington, Oregon, and northern California.

The tiny degree of relief provided by this amendment will be to allow the harvest of dead and downed timber; not live trees, but dead and downed timber, representing about 3 percent, 1/33 of that historic cut during the course of the 1980's in those three States. That 3 percent, that modest cut, must be measured against the set of injunctions that will almost certainly prevent any new timber-cutting contracts to take place in the States of Oregon and Washington for at least 2 years, and it must be remembered these are timber sales in perhaps the most productive forests anywhere in the world.

For example, the historic cut in the Olympic National Forest on the Olympic Peninsula of northwest Washington, has been approximately 200 million board feet per year. This year those contracts on the Olympic Peninsula are about 5 million board feet, or 2.5 percent of what historically has taken place.

I do not have the eloquence to describe the devastation that this sudden change has caused in a multitude of communities on that peninsula or elsewhere in Washington, Oregon, and northern California. Most towns are without visible means of support. Families have been broken up. Alcoholism and child abuse is on the increase because of the loss of employment on the part of people who have constructively contributed to the building of America and to the building of homes, the goal of all of us in this body. As a consequence, the relief provided even by this modest amendment is little more than symbolic; perhaps much more symbolic than it is real. It will be real enough for those several hundreds of rural men and women who will find employment during the course of the next year where otherwise there would be no employment whatsoever.

I do not, on the other hand, deprecate the symbolism that serves as another important part of this amendment, the symbolism that the people in this body, and the entire Congress of the United States, do have some concern about people. We must not simply exalt form over substance—speaking in abstractions—while ignoring the plight of productive men and women in the Pacific Northwest.

At this point, to emphasize the degree to which this does apply to people, I ask unanimous consent that three letters, one addressed to the distinguished chairman of the Appropriations Committee, the other two to Senators generally from the Timber Industry Labor-Management Committee, the International Woodworkers of America, and the United Brotherhood of Carpenters, be entered in the RECORD at this point.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

TIMBER INDUSTRY
LABOR-MANAGEMENT COMMITTEE,
Washington, DC, August 5, 1992.

Hon. ROBERT BYRD,
Chairman, Senate Appropriations Committee, U.S. Senate, Washington, DC.

DEAR SENATOR BYRD: The Timber Industry Labor Management Committee—a unique alliance of management and unions representing workers in the forest products industry—is writing to respectfully urge your strong support for the forest health amendment to the FY 1993 Interior and Related Agencies Appropriations bill to be offered by Senator Slade Gorton.

Existing laws, regulations and policies related to forest health and the salvage of dead and dying timber are *not* working. Consequently, the forest health crisis has reached a critical stage. In order to save our forests from wildfire, disease, and insect infestation, we must break out of the "business as usual" approach to this issue. If forest managers are to have any chance of saving our national forests, congressional action is needed now. We have a forest health emergency in our nation's forests, unlike any previously experienced, which Congress must address this year.

The Gorton Amendment addresses this crisis in an environmentally responsible fashion by: (1) expanding the use of the salvage sales trust fund to include a broader range of forest activities as well as Bureau of Land Management lands; (2) expediting the development of, and administrative review for, forest health and salvage projects; and (3) assuring that spotted owl habitat is not destroyed by wildfire, by allowing salvage activities in owl habitat to reduce fuel loads where such activities will not themselves adversely affect owl populations and habitat needs. You may have seen coverage yesterday on CNN of Oregon wildfires destroying owl habitat.

In conclusion, we strongly urge your support for the Gorton Amendment.

Sincerely,

MARK REY,

Executive Director, American Forest Resource Alliance.

DENNY SCOTT,
Assistant Director, United Brotherhood of Carpenters and Joiners of America.

INTERNATIONAL WOODWORKERS
OF AMERICA, U.S., AFL–CIO,
Gladstone, OR, August 5, 1992.

DEAR SENATOR: It is my understanding that Senator Slade Gorton will offer a forest health amendment to the FY 1993 Interior and Related Agencies Appropriations bill, currently under consideration by the U.S. Senate. On behalf of the International Woodworkers of America, U.S. (IWA, U.S.), I am writing to urge your support for Senator Gorton's amendment.

The Gorton amendment will allow for the sale of salvageable timber on public forest land. As you may know, a salvage sale involves trees that are diseased, are bug infested or have been fallen by wind storms. A salvage sale removes diseased and damaged trees, helping to protect the health of the entire forest.

The 28,000 members of the IWA, U.S. understand the importance of forest health. Millions of acres of public forests throughout the West are infested by insects and disease. Wildfire stands as a constant threat to these forests—the dead and dying trees that lay within are kindling that help fuel forest fires. The extreme drought the region is experiencing only increases the likelihood of sweeping fires.

Our members depend on salvage sales to help relieve the ongoing timber supply crisis currently afflicting the Pacific Northwest and Northern California. Forest products workers, their families and their communities are suffering from mill closings and severe job loss due to timber harvest restrictions on federal lands in the region to protect the northern spotted owl. We support Senator Gorton's amendment because it would provide federal land management agencies with increased authority to expedite salvage sales, freeing some raw timber for production.

In addition, the Gorton amendment would allow for and expedite judicial and administrative review of forest health and salvage projects. The amendment also would direct land management agencies to avoid salvage activities where they might have an adverse impact on spotted owl habitat.

We hope you will join the IWA, U.S. in supporting Senator Gorton's amendment to protect the health of our public forests, forest products workers and the northern spotted owl.

Sincerely,

WILLIAM HUBBELL,
President.

UNITED BROTHERHOOD OF CARPENTERS,
Washington, DC, August 5, 1992.

DEAR SENATOR: On behalf of the 550,000 working men and women of the United Brotherhood of Carpenters and Joiners of America, I am writing to urge your support of the amendment to be offered by Senator Slade Gorton to the 1993 Interior Appropriations bill.

Senator Gorton's amendment addresses the urgent issue of forest health. Public forests in the Western United States are being devastated by drought, insect infestation and disease. Forests that include dead and dying timber are open invitations to catastrophic wildfires that endanger wildlife, forest ecosystems and surrounding communities where our members and their families work, live and play.

Many of these diseased trees can be salvaged as raw material for local saw mills. These salvage sales take on increased importance as timber supply continues to dwindle in the Pacific Northwest and Northern California due to restrictions of federal timber sales to protect the northern spotted owl. Our members, who are suffering from the timber supply crisis in the region, desperately need the supply of timber that would be freed by salvage sales. Their situation is critical.

Senator Gorton's amendment would allow the salvage of dead and dying trees, providing some short-term, immediate relief to the ongoing timber supply crisis while protecting and improving the health of our public forests. Importantly, the amendment will prevent salvage that will "adversely impact" forests inhabited by the spotted owl. Indeed, by allowing for the removal of diseased trees that serve as fuel for wildlife in spotted owl habitat, the Gorton amendment will help protect the owl.

I hope you will support Senator Gorton's amendment and help provide for safer, more effective management of our national forests.

Thank you for your consideration.

Sincerely,

JAMES BLEDSOE.

Mr. GORTON. Mr. President, as recently as 3 years ago in section 318 of this same bill, we provided for 1 year of relief, 1 year of new timber sales at a relatively modest level, in order to provide a bridge for these victimized individuals and communities while the Congress of the United States comes up with a long-term solution to timber supply that would allow people to plan for their futures and to plan for their lives.

In the almost precisely 3 years that have passed since the time of the passage of section 318, absolutely nothing has been done by either the Senate of the United States or by the House of Representatives of the United States to provide for that permanent solution. Bills dealing with the entire range of the problem have been introduced in this body and have found their way to two separate committees in this body. No such bill has been reported out of its committee. In the House, the situation is almost the same. One subcommittee and one committee have acted on an extremely modest bill, which has gone on further and which, in my view, will go no further.

So the promise that was made—that Congress would reach a solution during that 1 year from late 1989 to late 1990—has manifestly been abrogated by the Congress itself. The amount of relief provided in this amendment is far more modest than that of section 318 in 1989, but it does at least amount to a modest, minor commitment.

The net result, of course, is that from a harvest level of 5 billion board feet a year to a level of 400 million board feet a year to a level of zero board feet a year is a set of policies which, had it been proposed as a policy here in the U.S. Senate as recently as 3 years ago, would, I am convinced, have been rejected overwhelmingly by Members of this body. Yet, we have allowed it to take place through the interpretation of statutes that have been passed over a period of several decades by this body. Now we have at least an opportunity to provide a small degree of relief and some kind of promise that we will act in the future.

Much of the debate over the last several years, Mr. President, has been cast in terms of owls versus people, people versus owls. I may say that much of the Senate on the west coast of the United States has been on those subjects, and to the extent that it is placed in that fashion, public opinion is overwhelmingly on the side of people.

In March and April this year, two scientific surveys indicated that only 4 percent of voters in the State of Oregon, 6 percent in the State of California—and this is the entire State of California—and 8 percent of the State of Washington indicated that they would accept the sacrifice—10,000 jobs or more in order to save the spotted owl. The cost of jobs is infinitely greater than that, Mr. President, and that amendment, in any event, does not pit owls versus people.

Much of the rest of the debate has been cast somewhat more broadly as being old growth versus people. That is not the case here either.

This amendment would allow the harvest of salvage timber, that is to say trees that have been blown down, uprooted and blown down, laying on the floor of the forest, or which is otherwise dead in habitat conservation areas in Washington, Oregon, and northern California.

It should be emphasized, Mr. President, that of these habitat conservation areas for the spotted owl, only 60 percent of the area is covered by old growth in any event. They go far beyond old growth areas. Seventy-eight percent of the old growth is already located in national parks, in statutorially designated wilderness areas or in Forest Service administrative set-asides. Dead and downed timber, by definition, is not owl habitat. Dead and downed timber, by any reasonable definition, is not old growth.

Moreover, the specific phraseology of this amendment states that this harvesting will not take place if such salvage will adversely affect the spotted owl habitat as determined by the Secretary of Agriculture. And in a last and final attempt to mollify the opponents of this amendment, we have excluded from the notwithstanding language the Endangered Species Act itself. The exemption is from the National Forest Management Act of 1976 and the National Environmental Policy Act of 1969.

Because we firmly believe that this harvest will not adversely affect the spotted owl, we have included the adversely affected language in the

amendment itself and we have avoided any change that is expressed or implied in the Endangered Species Act itself.

As a consequence, this amendment does not undercut the Endangered Species Act. It really does not undercut the provisions of either of the other acts because it does nothing with respect to their application to live trees and to live forests. It affects only salvage timber, timber that is already dead, and timber that cannot wait for a permanent solution because, Mr. President, when a tree is blown down, depending on its species, it is only going to last in any economically viable form for 1 to 3 years. It deteriorates very rapidly from timber that is good for lumber products, to timber that is good only for chips, to timber that is good for absolutely nothing at all.

As a consequence, the only substantive argument that can be made against this amendment, it seems to this Senator, is that for some reason or another, an absolute state of nature is the only proper state for the productive national forests of the Pacific Northwest. Somehow, an attempt to improve those forests, and even to improve the habitat for the prey of the spotted owl, is wrong. Somehow, our opponents argue that we can allow our forests to burn to the ground from natural fires, whether they are old growth or not, but we cannot touch them, we cannot improve them, we cannot use them for the homes we need, we cannot use them for the people who live in these timber communities and whose professions have been built on the national forests.

In addition, Mr. President, this amendment, I wish to emphasize, is not an amendment simply for the Pacific Northwest or for the three northwest States. It is an amendment for the entire country.

This bill also includes very significant language with respect to the funding of forest health improvement projects. We simply, in our statutes, have not given our forest managers enough authority to deal with these problems, a consequence of which is that those forests are in serious decline in many parts of the West and I suspect in many other parts of the country as well. The prescription is not an absolute lockup of those forests, which would be considered malpractice if they were human. The prescription, rather, is treatment, salvage, and reforestation. The amendments will allow the Secretaries of Agriculture and Interior, in their respective jurisdictions, to look forward with the objective of treating forest health problems before they reach epidemic proportions.

Let me give one simple illustration from my own State. In the Okanogan National Forest of northwestern Washington, more than 200,000 acres of trees were killed by the spruce budworm in the last year alone. More than 50 percent of the forested land in the Okanogan National Forest is infested with dwarf mistletoe and forest diseases. The Forest Service disclosed in its EIS for that management plan, that the forest "has entered the initial stages of a mountain pine beetle attack. If left to run its course, most of the mature live pine will be killed in the next 10 to 20 years."

On the Olympic Peninsula, a University of Washington forest entomologist, Robert Gara, surveyed the very blowdowns that serve as the basis for the second part of this amendment. Professor Gara concluded that those blowndown trees are being infested with Douglas fir beetles, ambrosia beetles, flat-headed, and round-headed wood borers at an alarming rate and, in some instances, these pests are beginning to infest adjacent standing green trees.

Professor Gara said:

From a biological viewpoint, I recommend immediate salvage of these and similar areas. The entire Pacific Northwest is undergoing a drought. Douglas firs and other forest tree species will be weakening and more easily killed by insect attacks. Of particular concern is the increase of Douglas fir beetle populations and their potential effect of opening large areas of old growth forests and, in this manner, downgrading northern spotted owl habitat.

This amendment will, both specifically and generally, improve the health of our forests. This amendment will also improve spotted owl habitat, rather than the opposite being the case.

The solution, of course, is a strategy that combines treatment, salvage, and reforestation. This amendment allows the Secretaries of Agriculture and Interior to design and implement forest health improvement projects in order to accomplish the objective of improving forest health, using money which they get from the salvage of the very dead and downed timber about which we are speaking.

The amendment will allow the Forest Service to salvage blowdown timber in spotted owl habitat unless it adversely affects that spotted owl habitat. Present injunctions under present laws require that the Forest Service cannot salvage that timber unless it enhances spotted owl habitat, a proposition that simply cannot be proven. But what foresters can say is that salvage operations can be performed in a manner that does not adversely affect that habitat.

This amendment will not destroy that habitat and it will not cause the building of more roads. It will, in fact, allow the removal of trees that are no longer good for the prey on which the spotted owl lives and will provide potentially for habitat at sometime in the future.

We are not talking about the last of the old growth forest, Mr. President. We are not talking about old growth forest at all. We are not really talking about the survival of the spotted owl. We are, on the other hand, talking about the survival of people and communities that deserve a great deal more attention and a great deal more support in this body than they have received during the course of the last half-decade or so.

To return to basics, we are talking about caring for people, the kind of people who have essentially been unrepresented in this body. We are speaking about extremely modest relief for those people, but a great deal of hope for them. We are not impinging on either the spotted owl or on old growth. To deny this modest proposal is to exalt form over substance, to ignore working people who are in desperate need. To approve the amendment is to offer modest relief and real hope to real people. This time it is appropriate to listen to the people and not to the professional lobbyists.

Mr. ADAMS addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington is recognized.

Mr. ADAMS. Mr. President, I rise in strong opposition to this or any amendment that would accelerate the timber salvage program in the national forests of Oregon, Washington, and California.

This amendment will only serve to aggravate the forest management crisis in the Pacific Northwest. It is not a solution to real, on-the-ground management problems. It only furthers the Bush administration's efforts to weaken current forest management and environmental laws and to overturn recent Federal court injunctions.

Such action is completely unnecessary. Acting Assistant Secretary of Agriculture John Beuter testified on July 28 before the Senate Energy and Natural Resources Committee that the Forest Service has full statutory authority today to conduct salvage sales in national forests. Language currently in the fiscal year 1993 Appropriations Committee's Interior bill reaffirms that authority.

The problem this amendment attempts to remedy is not that there are a lot of dead and dying trees that must be cut and removed from the forests. The problem, as described by the chief of the Forest Service in a briefing to Senate staff on June 19 of this year, is that the Forest Service's past management practices, including its past salvage sales programs, have altered the nature of many forest ecosystems and have left them in a poor condition to withstand natural catastrophes. And this is not a small problem: Up to 75 percent of some of our eastern forests have been affected, causing severe threats to the economic future of timber-dependent communities and to the health of salmon populations and other fish and wildlife species.

The national forests of eastern Washington and Oregon were cited by the

chief as the clearest example of why the Forest Service needed to change to a more ecologically sensitive approach to forest management. The chief and his staff described how the Agency's past management changed the forests from a drought- and fire-resistant mix of many different species to thick stands of fewer species that are highly susceptible to disease, drought, and fire.

The chief described the necessary remedy as a carefully planned effort by Forest Service scientists to immediately begin restoring the forests to their premanaged condition, a process the chief said could take 100 years. In order to achieve this desired future condition, the Forest Service will need to conduct salvage sales and other standard forest management activities, but only as part of a carefully designed plan to return to the original mosaic of diverse tree species.

This amendment would promote the old, traditional salvage approach that focuses only on individual tree health, not the long-term health of the entire forest. Accelerating the cutting of trees without having planned what the future landscape and mix of tree species must be will further delay and possibly destroy the opportunity to restore the health of our forests.

Unless carefully planned to restore forest health, salvage programs pose a significant threat to forest ecosystems. They can increase erosion, disturb, and compact the soil, injure live trees, and destroy wildlife habitat. The Scientific Panel on Late-Successional Forest Ecosystems, commissioned by two House committees, concluded in its report on Northwest ancient forests:

> Any late successional/old growth areas reserved should be managed to maintain and/or enhance their ecological integrity * * *. In general, removing merchantable timber—including salvage—from reserved late successional/old growth areas is not appropriate to meet this objective.

This amendment is contrary to such sound, scientifically based management. It would override Federal District Court Judge William Dwyer's injunction that bars logging of any kind in spotted owl habitat in the Pacific Northwest. Dwyer's injunction was issued because the Forest Service violated its statutory responsibilities in spite of court orders and congressional directives to obey them. Using the appropriations process to override this injunction would be sanctioning such violations and rewarding the Forest Service for its repeated refusal to obey the law.

One of the provisions in this amendment would allow expedited NEPA review for salvage sales that are consistent with forest management plans. However, this completely fails to recognize that many of the existing forest management plans never contemplated the epidemic level of infestations and catastrophic fire conditions we are experiencing today.

This amendment would also override the National Environmental Policy Act by removing the Secretary of Agriculture's existing discretion under NEPA and directing him to establish categorical exclusions for certain types of salvage sales. This would thwart the agency's present efforts to use its existing rulemaking authority to develop the new ecosystem management approach recently announced by the chief.

Mr. President, this amendment also incorporates provisions that would limit administrative and judicial review of salvage sale decisions by the Forest Service. This concept of restricting review of proposed agency actions is a dangerous precedent that has been soundly rejected by the Senate before. I urge my colleagues to reject such a drastic remedy again.

I support the Forest Service's efforts to improve its process for obtaining public comments during the planning phase of management actions, but I am absolutely opposed to provisions such as those in this amendment that limit review of a proposed action once it has been announced. The appeals process has not caused significant delay but rather has greatly improved the quality of Forest Service decisions. On this ground alone, I urge my colleagues to defeat this amendment.

Mr. President, the authorizing committees with jurisdiction over the national forests in both the Senate and the House are currently considering legislation to deal with this and other forest management issues in Oregon, Washington, and California. Indeed, the Senate Energy Committee will meet this week to markup one of the pending bills. An appropriations amendment is unnecessary and would interfere with efforts by the authorizing committees to develop a more comprehensive program to resolve the forest management crisis in the Pacific Northwest.

I urge my colleagues to vote against this amendment. It will aggravate rather than solve the problems it attempts to address. It will only accelerate business as usual at a time when carefully planned change is needed.

Mr. President, we are going to have a great disagreement on the facts that have been stated by the junior Senator from Washington, and so I hope my colleagues will listen to this because it has a long history.

I rise in strong opposition to any amendment that would go backward, as this one would, to out-of-date forest practices, and it is cleverly worded but that is what it does, and prevent the modern technology changes that are being made by the Forest Service and are attempting to be made against strenuous opposition by Cabinet Secretaries and others in the administration.

This is not a change to go forward. This amendment takes us backward. It would repeal part of the judicial review processes, destroy the new plans which the Forest Service is trying to apply science to save the forests against the political pressures from above. It not only is legislation again on an appropriations bill, in violation of rule XVI, but it is very bad legislation.

I hope we will turn it down because we have legislation pending in the House, in three committees, we have legislation pending in the Senate, and we need a change but not a program of accelerated salvage in the national forests of Oregon, Washington, and California.

I want to talk a minute about section 318 and about this delay, because the Forest Service is already—and this is the fact—selling the salvage rights in the 703 million board feet of blowndown timber in those forests—517 million board feet have already been sold. Of the remaining 185 million board feet, 115 million board feet is in spotted owl habitat—to protect the old forest which has been designated by the Forest Service to maintain the ecological integrity of the forest.

Now, Judge Dwyer, the judge who was referred to by the junior Senator from Washington as issuing this order, is a fine district judge. His appointment was made by President Reagan, and he was supported by former Senator Dan Evans, by Senator GORTON and me, and he ordered that there be no harvest or salvage in the spotted owl habitat.

Now, we have been referred by the junior Senator from Washington to section 318. He was not here at that time, but Senator HATFIELD, the fine Senator from the State of Oregon, and myself were on the Appropriations Committee, and at that point we tried to give time——

Mr. GORTON. Will the Senator yield?

Mr. ADAMS. I will be happy to yield.

Mr. GORTON. This Senator, indeed, was a Member of the Senate at the time of section 318.

Mr. ADAMS. I am sorry. He was not a member of the Appropriations Committee at that time.

Senator HATFIELD and I did propose a delay to give the Forest Service time to put their plans into perspective and make their plans modern. In other words, to change into the modern technology.

I am going to quote now from this fine district judge who was appointed by President Reagan and was supported by Senator GORTON and myself, and he is a fine judge, as to why it is that he has put in these injunctions. I quote from his opinion of July 21.

> The record in this case and in *SAS* v. *Evans*, 952 F.2d 297 (9th Cir. 1991), shows a long history of delays by the Forest Service. The National Forest Management Act set a 1985 target date for the adoption of standards and

guidelines for all national forest units. 16 U.S.C. §1604(c). That date was not met. In October 1989 Congress directed in section 318 that the agency have a spotted owl plan in place by September 30, 1990. That was not done. In *SAS* v. *Evans*, 771 F. Supp. 1081, 1090–91, the agency sought sixteen more months and was afforded eleven more months to issue an EIS and ROD. The job was not done in compliance with NEPA. The agency has argued that it need not do what the laws plainly require it to do, *See, e.g., SAS* v. *Evans*, 952 F.2d 297, 301–302 (9th Cir. 1991). In light of this history, a timetable is essential.

This judge, this Senate, this Appropriations Committee has tried everything possible to say to the administrative agencies you must comply with the law and you must get this job done. We have had delay after delay after delay.

I want to speak a minute about the jobs that are involved and what is happening. At one time it was necessary, and the Senator from Oregon is on the floor now. Senator PACKWOOD and myself voted later and finally got some correction to this, but at one time we had a great recession in the Pacific Northwest forests and it was necessary to export logs, so we supported export logs. We were trying to give jobs to people out there.

But this export went all out of control. You talk about loss of jobs. We lose 5.5 jobs for every million board feet of raw logs that are exported.

And last year, last year in Washington State alone more than 2 billion board feet of raw logs were shipped overseas. That is 12,000 jobs, far beyond anything that Senator GORTON has referred to.

And let us talk a little bit about why jobs have been falling in the forests. It is not the spotted owl. That is not the issue at all. In the 1980's, when the forest harvest in the Northwest was driven up by the administration it rose from 3.6 billion board feet per year to 5.5 billion board feet, a completely nonsustainable increase. Do you know what happened with jobs? We lost 26,000 jobs. The jobs are being lost in the forest through technological changes, and the companies' practices. That is what is causing the job loss. The timber supply came far down the line in terms of how we are losing jobs.

Let us take, for example, logged exports. I was tempted in the prior debate, but I stayed out of it so we would be in this, to ask these Senators who were talking about the Fowler amendments, and so on, whether they were opposed to log exports. They are not opposed to log exports. They want to export logs, too. This is greed, it is pure greed.

Since the 1960's, log exports rose 31 percent and the number of domestic processors was cut in half. You see, the number of mills has reduced because the number of workers needed to produce 1 million board feet of lumber has dropped by 1.5. Increased productivity is projected to eliminate 33,000 additional jobs over the next 2 decades regardless of the Endangered Species Act. So that is why Senator LEAHY and I on the Senate side have introduced a bill with a number of cosponsors which goes to the problem of technological change in the forests.

Now, this amendment runs flatly against it. The Forest Service has the power to conduct salvage operations. As I mentioned before, they have already sold out for harvest 503 million board feet of the 703 million board feet already there.

What we have is a crisis of management in the Pacific Northwest which is being back-doored and being harmed by the Cabinet level and above. The Forest Service is trying to change.

I used to work for the Forest Service when I was 16. We had a lot of practices then that we do not follow anymore. We cannot follow them anymore. The timber products are expanding in size, the lumber markets move back and forth across the borders. We now export an enormous number of logs from Canada. But we are exporting our finest logs in the Northwest off private lands to Japan.

It was only by the efforts of Senator PACKWOOD, myself, and others, that we finally stopped log exports because the very people that are saying that they want this salvage operation have also shipped the logs out.

You cannot hold water on both shoulders like that. You cannot ship the best logs out and say you want to salvage something that is on the floor of the forest and equate it to jobs in any way or to help with the forest.

I would like to talk about that for a minute because the health of the forest is what it is all about. If this forest is not there for our children and our grandchildren, we have done a great disservice to the Nation, to our children and to our children's children.

This is recognized by people who are professionals in the field. It is even recognized by some of the people working in the Department because, for example, Assistant Secretary of Agriculture John Beuter testified on July 28 before the Senate Energy and Natural Resources Committee that the Forest Service has full statutory authority today to conduct salvage sales in a national forest.

Language currently in the fiscal year Appropriations Committee Interior bill reaffirms that authority. The chairman and myself and others on the committee worked carefully on that language. It provides that this statutory authority is reaffirmed.

So there is no need to pass a salvage bill. They have all the authority they need. They are trying to pass, in the Forest Service, on to a new type of management practice.

You may ask why is this amendment offered? It is because the Forest Service, the courts, the people on the ground, the people that are working day by day in the forest, know they have to change. They have to change the past practices because of the problem we have in the Northwest forest, is the Forest Service past management practices, including also past salvage sales program. They are trying to sell it. They have plenty of authority to change it. They are changing it. But the past programs altered the whole ecosystem of the national forests.

It is time for change. The change should not go backwards. It should go forward. This amendment would prolong the path. It would abandon all the new scientific approaches which we have asked for and received.

The Forest Service in the past left our forest in poor condition. I agree with the Senator, the junior Senator from Washington, about the fact that there is bug infestation, there is danger of fire and that is because the Forest Service with its past practices left a terrible state of affairs in the eastern part of our State. Some 75 percent of our State's forest has already been affected and this threatens the economic future of timber-dependent communities.

Why did it happen? They cut the ponderosa pine. Its timber is bark resistant to fire, it stands tall. It is able to resist drought. It is able to resist disease. These were cut and instead you have had allowance of a growth species of timber that are subject to drought, infestation, and fire. That is what is occurring now. The Forest Service recognizes this. It is trying now to change it.

The forests of the eastern part of Oregon and Washington were cited by the Chief of the Forest Service as the clearest example of why the Forest Service needs change, to move to a more ecologically sensible approach to forest management. I will change those words and say to try to put those forests back into the State they were in when they could resist fire, bug, and drought. The Chief described in detail how the agency's past management changed the forest. They went from a drought and fire resistant mix of many different species with the ponderosa pine being the key to fixed stands of fewer species.

These new strands are highly susceptible to disease, drought, fire. Indeed, you are seeing this right now on television. You watch television tonight, you can see forests in Idaho, Oregon, and Washington burning as well as in California.

This is caused by these past practices that were bad, that the Forest Service is trying to change, which this amendment would prevent. The Forest Service knows how to salvage. It knows how to go in there. It has to change its practices because it finds what it did in the past on salvage was wrong.

The Chief of the Forest Service described what was necessary. He said there has to be a carefully planned effort by Forest Service scientists to immediately begin to restoring the forest to the premanaged condition.

Why is that? To manage to get as much timber as possible out, not multiple uses, not management—just as much as you could cut. This process the Chief said could take 100 years. But in order to achieve this condition, the Forest Service needs to conduct salvage sales and other standard management activities but only, Mr. President, as part of a carefully designed plan to return to the original mosaic of the diverse species that grow where they should and resist where they can, and are proper to the portion of the country in which they grow.

Let me repeat. Salvage must be done only as a part of a long-term plan, not a slash and grab job. That is what this amendment is doing.

The Forest Service is already harvesting over 500 million board feet. What they want to do is go into the old forests marked by the spotted owl habitat. It is a slash and grab job. Why do this? We are already salvaging. We already know how to do that. The Forest Service knows how to do that.

Our job now is not to have short-term policies like this, but to look at the long-term policies of how we keep this forest productive for timber harvest, productive for salmon, productive for bird and wildlife, protective for huntsmen, fishermen, salmon. This is a multiple use forest. This is what it is all about. This is why you have seen all of these amendments and why I am fighting this amendment.

I do not think this amendment should be on here. I think the authorizing committees should operate on this. I do not like seeing these on appropriations bills. I hope the chairman tables it. We should not have it on here at all because if you start accelerating the cutting of trees, and this salvage without having planned what the future landscape and mix of the species will be, this will destroy all future opportunity for health in our forests.

It is going to take careful planning to restore forest health, and salvage programs such as this are a real threat to any plan to save the forest. Why? They increase erosion, they disturb and compact the soil, they injure live trees, and they destroy wildlife habitat.

All of this is done unnecessarily by statutorily demanding that the agency do something that it already has the power to do and already is in the process of carrying it out.

What the Scientific Panel on Late-Successional Forest Ecosystems really says is you try to build your forests back up. You have in it older growth, you have in it middle-aged growth, and you have in it new growth.

I can remember years ago planting forests when I worked for the Forest Service. They are now full grown forests. Part of this system, we often cut it. We often cut it in the Northwest.

Two House committees asked a scientific panel to look at this.

They concluded in the report on Northwest ancient forests:

> Any late successional/old growth areas reserved should be managed to maintain and/or enhance their ecological integrity. * * * In general, removing merchantable timber (including salvage) from reserved late successional/old growth areas is not appropriate to meet this objective.

So the scientists have looked at this. They say do not do what is being required here. The Forest Service has been convinced. We have too many political people out there, too much greed running in the land.

This amendment is contrary to that opinion and it would override the judge's opinion which he has tried again and again to get the time spent to have them develop the things that are necessary.

Using the appropriations process to override this injunction would be sanctioning past violations. I do not want to take a lot more time, because it is necessary that we move this bill forward. But this amendment fails to recognize that many of the forest plans are completely out of date. This amendment, despite the change made in it at the last minute, still injures the Environmental Policy Act by removing discretion under NEPA.

It would thwart the Forest Service's present efforts to use its rulemaking authority as announced by chief of the Forest Service. It would prevent and limit the review of salvage sale decisions of the Forest Service. That is dangerous.

All of you who stand for judicial and proper review of decisions should vote against this amendment. This idea has been soundly rejected by the Senate before, and I urge my colleagues to reject this drastic remedy again. The appeals process has not caused significant delay. In fact, the Forest Service itself says it has improved the quality of its decisions.

It is necessary that we give the authorizing committees a push, that they should be coming over from the House, trying to get the bill now. And Senator LEAHY and I have a bill here to match with it, to take care of these very complex matters within the forests.

I urge my colleagues to vote against this amendment, because it would aggravate the problems of the forests of the Pacific Northwest. It preserves outdated practices at a time when carefully planned change is needed. We have to have change to meet the fact that we have people out there now, all over. We have to help the people in the forest communities, preserve their livelihoods, and they cannot do it—if we were to cut the whole forest in 5 years, we would be here again doing the same thing.

I ask unanimous consent that the opinion of Judge Dwyer of July 21, 1992, be printed in the RECORD at this point.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[U.S. District Court, Western District of Washington at Seattle, No. C92-479WD]

SEATTLE AUDUBON SOCIETY, ET AL., PLAINTIFFS *v.* JAMES R. MOSELEY, ET AL., DEFENDANTS, AND WASHINGTON CONTRACT LOGGERS ASSOCIATION, ET AL., DEFENDANTS, INTERVENORS

ORDER ON MOTIONS FOR STAY PENDING APPEAL

Defendants James R. Mosley, et al. ("Forest Service") and defendants-intervenors Washington Contract Loggers Association, et al. ("WCLA") have filed notices of appeal from the Memorandum Decision and Injunction of July 2, 1992 ("July 2 decision") (Dkt. #181), and from the Order on Cross-Motions for Summary Judgment, etc. ("May 28 order") (Dkt. #138). The Forest Service and WCLA now move for a stay of the injunction pending appeal. Plaintiffs Seattle Audubon Society, et al. ("SAS") oppose a stay. All materials filed in support of or opposition to the motion have been fully considered.

The court may suspend or modify an injunction during the pendency of an appeal. Fed. R. Civ. P. 62(c). The standard, set out in Lopez versus Heckler, 713 F.2d 1432, 1435–36 (9th Cir. 1983), is similar to that employed in deciding whether to issue a preliminary injunction. The prospects for success on appeal, the possibility of irreparable injury, the balance of hardships, and the public interest must all be weighed.

There are two parts to the injunction issued on July 2. One part enjoins the Forest Service from auctioning or awarding additional timber sales in Regions Five and Six that would log suitable habitat for the northern spotted owl until revised standards and guidelines in compliance with the governing statutes are adopted and in effect. *See* July 2 decision at 18. A stay of that part of the order would allow additional logging sales in old growth habitat areas in the national forests to go forward despite the ruling that this cannot be done without a legally-adopted plan. The resulting harm would be irreparable. Nothing has been presented as to the prospects on appeal, or as to relative hardship or the public interest, that would justify a stay. See July 2 decision at 11–15.

The other part of the injunction directs the Forest Service to prepare a new or supplemental environment impact statement ("EIS") in compliance with the National Environmental Policy Act ("NEPA"), 42 U.S.C. §4321 *et seq.*, curing the defects listed in the May 28 order; requires the adoption of a new record of decision ("ROD") following completion of the EIS; and directs the Forest Service to file by July 14, 1992, its proposed schedule for the completion of those steps. *See* July 2 decision at 17–18. The filing of the schedule has been deferred pending a ruling on the present motion. *See* Order Granting Forest Service's Motion to Shorten Time and Setting Schedule on Motion for Stay Pending Appeal (July 13, 1992) (Dkt. #191). In asking that this part of the injunction be stayed, the Forest Service argues that the court has no power to order it to perform specific tasks or to complete them by a specified time, that the time for compliance in any event should be left to the agency's discretion, and that compliance will be expensive and difficult and should be deferred pending appeal.

The Supreme court has held that a district court has the authority to "order the relief it considers necessary to secure prompt compliance" with the law. Weinberger versus Romero-Barcelo, 456 U.S. 305, 320 (1982). *See also* Amoco Prod. Co. versus Village of Gambell, Alaska, 480 U.S. 531, 545. Federal courts have often found it necessary to order administrative agencies to take particular steps, *see, e.g.*, Abramowitz versus EPA, 832 F.2d 1071, 1078–79 (9th Cir. 1987), and to do so by specified times, *see, e.g.*, Alaska Ctr. for the Environment versus Reilly, — F. Supp. — 1992 WL 145000 (W.D. Wash. June 8, 1992); Sierra Club versus Ruckelshaus, 602 F. Supp. 892, 898–99 (N.D. Cal. 1984). To hold that courts cannot do this would invite lawlessness; an agency could escape its statutory duties simply by procrastinating. *See* July 2 decision at 16–17, and cases cited.

The record in this case and in SAS versus Evans, 952, F.2d 297 (9th Cir. 1991), shows a long history of delays by the Forest Service. The National Forest Management Act set a 1985 target date for the adoption of standards and guidelines for all national forest units. 16 U.S.C. §1604(c). That date was not met. In October 1989 Congress directed in section 318 that the agency have a spotted owl plan in place by September 30, 1990. That was not done. In SAS versus Evans, 771 F. Supp. 1081, 1090–91, the agency sought sixteen more months and was afforded eleven more months to issue an EIS and ROD. The job was not done in compliance with NEPA. The agency has argued that it need not do what the laws plainly require it to do. *See, e.g.*, SAS versus Evans, 952 F.2d 297, 301–302 (9th Cir. 1991). In light of this history, a timetable is essential.

To comply promptly with the July 2 injunction is well within the Forest Service's capability. It has the scientists who can do the job. The injunction simply requires a new or amended EIS in compliance with NEPA, curing the three defects specified in the May 28 order. One of these is the need, expressed by the Forest Service in the current EIS, to reassess the viability rating if the Endangered Species Committee were to authorize Bureau of Land Management timber sales on Oregon that would jeopardize the spotted owl. The Acting Assistant Secretary of Agriculture for Natural Resources and Environment stated in a declaration dated May 21, 1992, that he had "directed the Forest Service to contact the EIS team to consider the effect of the ESC decision on the viability assessment" and had been notified that "it would take four to eight weeks" to get a report back to him. *See* May 28 order at 13. It thus appears that the needed information could be quickly gathered if it has not been already. There is also no reason why the alternatives could not be reviewed expeditiously in light of the Anderson and Burnham report. As to the low viability rating for other vertebrate species quoted in the current EIS, the Forest Service argues that it should not have to do a separate viability study on every such species; but the court has already made clear that there is no such requirement. *See* July 2 decision at 9. What is required is that the plan adopted not be one which the agency knows or believes will probably cause the extirpation of other native vertebrate species in the planning areas.

Difficulty of compliance will not permit an agency to avoid its duties under NEPA. *See Calvert Cliffs' Coordinating Comm., Inc.* v. *Atomic Energy Comm'n*, 449 F.2d 1109, 1115 (D.C. Cir. 1971). But in any event the difficulties claimed here are highly exaggerated, and not such as to justify the further delay that would result from a stay.

For the reasons stated, the motions for a stay of the July 2, 1992, injunction pending appeal are denied. The Forest Service has asked that a week be allowed for it to seek a stay in the court of appeals. Two weeks will be allowed for that purpose. Accordingly, the date for the Forest Service to file its proposed schedule for completion of the steps required by paragraph VII-A of the injunction is extended to August 4, 1992; any comments on the schedule by the other parties will be due on August 7, 1992.

The clerk is directed to send copies of this order to all counsel of record.

Dated: July 21, 1992.

WILLIAM L. DWYER,
U.S. District Judge.

Mr. ADAMS. Mr. President, I urge my colleagues to vote against the amendment. I hope we can promptly arrive at the end of this debate.

Mr. BYRD. Mr. President, we have now been on this amendment 43 minutes. I see the distinguished Senator from Oregon [Mr. PACKWOOD] who wishes to speak, and the distinguished Senator from Montana [Mr. BAUCUS] and the distinguished Senator from Vermont [Mr. LEAHY] who both wish to speak.

I wonder if we can reach a time agreement on the amendment, so we can have a disposition of it one way or the other. How long would the Senator from Oregon need?

Mr. PACKWOOD. I was prepared to speak only 10 minutes, until I heard the senior Senator from Washington. I think I may need 30 minutes.

Mr. BYRD. The Senator from Oregon wants 30 minutes. How much time does the Senator from Montana desire?

Mr. BAUCUS. Ten minutes.

Mr. BYRD. The distinguished Senator from Vermont?

Mr. LEAHY. Mr. President, if it would help, I could do mine in 6 minutes, if I could go soon.

Mr. ADAMS. In addition to the ones the Senator has requested—and that time is to be taken into account—Senator CHAFEE wanted 10 minutes. He is not here, so I can speak for him. Senator LEAHY is here, so he can speak for himself. Senator LIEBERMAN wanted 5 minutes. Senator BAUCUS wanted 10 minutes. Senator MITCHELL wants 5 minutes and, of course, I have already had my time.

I would like a few minutes to close, if I could.

Mr. BYRD. How much time would the Senator need to close?

Mr. ADAMS. I will need 2 minutes to close. Senator WIRTH wanted 5 minutes.

Mr. BYRD. How much time does the Senator from Vermont need?

Mr. LEAHY. Mr. President, I tell the distinguished President pro tempore that if I could go next, I could do it in 6 minutes.

Mr. GORTON. Mr. President, I say to the distinguished chairman of the Appropriations Committee, as the sponsor of the amendment, this Senator would like to close for about 10 minutes. The junior Senator from Idaho has said that he can make his remarks in 5 minutes. I would rather make that 7. I do not want to restrict him.

I am told that both the junior Senator from Montana and the junior Senator from Alaska wish time. I am not informed at this point as to how much. I think probably I would be willing to agree to 10 minutes each, and I rather suspect they will not need that long.

Mr. LEAHY. I tell the distinguished Senator from West Virginia that if I could go soon—I am supposed to be somewhere else—I could do it in 6 minutes.

Mr. BYRD. If the Senator could not go soon, how long would it take?

Mr. LEAHY. Considerably longer.

Mr. BYRD. The Senator from West Virginia does not have the power of recognition.

Mr. LEAHY. I believe the Senator from West Virginia is going to make a unanimous-consent request which may include at least the order, and perhaps the next person or so to be recognized, and that might take care of the situation.

Mr. BYRD. I did not intend to do that.

Mr. LEAHY. I am sorry. I misunderstood the Senator.

Mr. PACKWOOD. If the Senator will yield, I am happy to let the Senator from Vermont go first, if we can get an order of recognition. I think I was on my feet and here first, but that is fine if he wants to go for 6 minutes, if I could have a time limit of 30 minutes to go after him.

Mr. BYRD. Mr. President, I have a total request here of 115 minutes. I ask unanimous consent that the remaining time on this amendment be limited to not more than 2 hours, which is 120 minutes. Senators have already indicated, and I have indicated, the time limits. I hope someone at the desk has been taking it down. So I ask unanimous consent that the time be limited to 2 hours. Actually, it is 115 minutes.

I will restate that.

I ask unanimous consent that the time be limited to not beyond the hour of 4:30. That is 1 hour——

Mr. PACKWOOD. Reserving the right to object, Mr. President, I think Senator GORTON——

Mr. BYRD. And I ask that Mr. LEAHY be permitted to go next, and that Mr. PACKWOOD follow Mr. LEAHY.

The PRESIDING OFFICER (Mr. DODD). Is there objection?

Mr. PACKWOOD. Reserving the right to object.

Mr. GORTON. Mr. President, may I inquire of the distinguished President pro tempore, was he setting both a time for a vote, or the termination of debate, or was he incorporating that in all of the request for specific amounts of time to be made?

Mr. BYRD. May I say to the distinguished Senator I took note of all the

times the various Senators mentioned, including the Senator from Washington, who indicated there were two Senators who wanted, I believe, 7 or 8 minutes, and he suggested 10 each. I put down the 10 each. He will remember who those Senators are.

Mr. GORTON. Under those circumstances—and they are Senators MURKOWSKI, BURNS, and CRAIG, about whom I asked separately. As long as each of them is protected with up to 10 minutes, together with mine, and the 30 of Senator PACKWOOD, we will have no objection.

Mr. BYRD. So there will be no confusion, I suggest that we restate the times. I ask unanimous consent that the Senator from Vermont have 6 minutes, to be followed by the Senator from Oregon [Mr. PACKWOOD] for not to exceed 30 minutes; and that the remaining time be allotted as follows: 10 minutes to the Senator from Montana [Mr. BAUCUS].

Will the Senator from Washington help me?

Mr. GORTON. Yes. Ten minutes for the Senator from Idaho [Mr. CRAIG]; 10 minutes for the Senator from Montana [Mr. BURNS]; 10 minutes for the Senator from Alaska [Mr. MURKOWSKI]; and 10 minutes to close for this Senator.

Mr. BYRD. Now will the senior Senator from Washington help me?

Mr. ADAMS. Yes.

Senator CHAFEE has requested 10 minutes; Senator LEAHY has requested whatever time is agreed upon with the chairman; Senator LIEBERMAN has requested 5 minutes; Senator BAUCUS needs 10 minutes, the senior Senator from the State of Montana; the majority leader, Senator MITCHELL, requests 5 minutes; Senator WIRTH requests 10 minutes.

Mr. BYRD. Mr. President, I assume somebody has been taking this down. Certainly, the official reporter has.

I ask unanimous consent that further time for the debate on this amendment be limited to the total of the times that have been specified by various Senators here in this colloquy, and that at the conclusion or yielding back of that time, a vote occur on or in relation to the amendment, and that no second-degree amendments be in order.

The PRESIDING OFFICER. Is there objection?

Mr. GORTON. Mr. President, reserving the right to object.

The PRESIDING OFFICER. The Senator from Washington reserves the right to object.

Mr. GORTON. Mr. President, I ask the distinguished President pro tempore, because of some errors which I have noted in preparing the amendment, this Senator reserves the right to modify the amendment.

Would this request preclude him from doing so?

Mr. BYRD. It would. The Senator presently has the right to modify the amendment, because no action has been taken thereon; am I correct?

Mr. GORTON. That is correct.

Mr. BYRD. I ask unanimous consent that the Senator may do so. How soon will he be ready to modify it?

Mr. GORTON. I hope within 5 or 10 minutes.

Mr. BYRD. I ask unanimous consent the Senator be allowed to modify his amendment, notwithstanding the consent agreement, if it is entered into, if he offers the modification within 10 minutes.

Mr. ADAMS. Mr. President, we have to know what we are operating with. If the Senator wishes to do it, we would like to have it ready, Mr. President.

Mr. GORTON. I am happy to.

Mr. PACKWOOD. Mr. President, if I may ask a question. As with the President pro tempore, I was trying to listen to all the times. If, by chance, that takes us past 4:30, we will be vitiating that request and using the time until it is yielded back, and vote?

Mr. BYRD. Yes. The second takes precedence over the first. I was not sure.

Mr. PACKWOOD. I was not either. I thank the Chair.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from West Virginia.

Mr. BYRD. Mr. President, I am informed that the total of the times that have been specified here is 2 hours and 6 minutes, which will put us up close to 5 o'clock. It would be more nearly 4:45 or 4:50; something along there.

I thank all Senators.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, I would like to speak just briefly on this amendment, and express some of my concerns.

This amendment is really nothing more than a Trojan horse. On the outside, it appears reasonable. but if you look at the inside, that is where the flaw exists.

This amendment promises to open our ancient forests to logging, to weaken our environmental laws, to hamstring management of the national forests, and to limit the rights of the citizens of the United States to access to the courts.

Also, I point out to my colleagues, cutting down dead or dying trees for salvage is not the exact science that many here want us to believe. The nature of the Forest Service's current rating system to decide whether a stand of timber is dead or dying is ambiguous, and therefore open for abuse.

Nobody knows how many live old-growth trees may be cut down to allow loggers to cut and remove a salvage tree from the forest.

The ancient forests used to cover a large, large part of the United States, including the Green Mountains of Vermont. but today, they are mostly gone.

Actually, until we had some recent court cases, what is left was being cut at an alarming rate. It is not just the environmentalists that are raising this cry. Many foresters themselves see that the current logging rates in the Pacific Northwest and across the Nation are not sustainable. Soon the ancient forests will be gone, and they will be out of jobs.

The last remaining ancient forests are part of the same heritage that includes the Grand Canyon, Yosemite's Half Dome, and Old Faithful. Our old-growth forests are unique and special. Once they are gone, they are gone for all time.

This is more than just a fight to save trees or save an owl. It is a fight to save a very special, unique ecosystem, which houses a diversity of plants and animals, some of which are found nowhere else in the world.

The salmon industry, for example, does support the rural economy of many, many communities in the Pacific Northwest. And it was in the ancient forest in the Pacific Northwest where they found the Pacific yew. Its bark contains the active chemical that is used to produce taxol, a drug proven effective in treating ovarian cancer. In fact, it saved the life of a Vermonter from Rutland.

In 1989, Senator HATFIELD and I agreed between ourselves there would be no more ancient forest riders to the Interior appropriations bill. Obviously, any Senator can have an amendment on any issue. But this is the third time since then that I have had to oppose this kind of amendment, either in committee, on the floor, or in conference.

The Senate has rejected, however, since 1989, efforts to place forestry riders that would weaken environmental laws on appropriations bills.

Aside from the procedural problems, there are problems in the amendment itself.

The proponents of this amendment accurately point out that the forest health problems in parts of northern California and the Pacific Northwest have reached dangerous levels. I have been told that forests on the east side of the Cascade Mountains—which were alive this spring—will be dying by summer's end. For this reason, I believe we must provide for a salvage sale program which provides for the orderly and ecologically sound removal of dead and dying timber.

This amendment contains two fatal flaws—one that affects ancient forest and one that affects national forests from coast to coast.

The first flaw is with ancient forests. The amendment lets the U.S. Forest Service override court injunctions that prohibits timber harvesting in spotted owl habitat unless it improves such habitat.

The second flaw is that the proponents of this amendment claim that

it will improve the health of the forests. But the amendment affects more than forest health; it affects national forests from coast to coast and would:

Allow exclusions from the National Environmental Policy Act requirements;

Limit citizens ability to question Forest Service decisions; and

Limit citizens access to the courts.

I do not think that we should take such a drastic step as a rider to an appropriations bill; not to change the rights of every single citizen in this country.

There is a way to develop a salvage program, one that is sustainable and environmentally sound. That is the kind of program that Senator ADAMS and I have included in S. 2895, the ancient forest legislation that we have introduced.

I should note that the chairman of the full Appropriations Committee, Senator BYRD, included language in this year's appropriations bill directing the Forest Service to develop a salvage program that meets our environmental laws. This language is responsive to Senator GORTON's concerns, while protecting the environmental laws that are so important to our Nation's well-being.

Mr. President, what we have here is not a good amendment. This amendment does not do what people say it will do, but does far, far more things than the amendment admits it will do.

I said earlier—and I will close with this—the amendment is nothing more than a Trojan horse. On the outside, it appears reasonable. But on the inside, it promises to open our ancient forests to logging, to weaken our environmental laws, to hamstring management of national forests, and to limit citizens' access to the courts.

I would say, as a chairman of the Senate Agriculture, Nutrition, and Forestry Committee, this is bad legislation. It is a major policy step done in the guise of a rider on an appropriations bill.

It does not belong here. This is not the place to decide this kind of policy. But even if this was the proper vehicle to decide it, this is not the way to go.

Mr. President, if I have remaining time, I reserve the remainder of that time.

The PRESIDING OFFICER. The Senator's time has expired.

The Senator from Oregon seeks recognition.

Mr. PACKWOOD. Mr. President I believe that the Senator from Washington had to get his revised amendment in within 10 minutes.

I ask unanimous consent that I might yield to him for the purpose of offering his amendment without losing my right to the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 2904, AS MODIFIED

Mr. GORTON. Mr. President, I send a modification of my amendment to the desk.

The PRESIDING OFFICER. The Senator has the right to modify his own amendment, and the amendment is so modified.

The amendment (No. 2904, as modified is as follows:

On page 67 of the bill, strike lines 9 through 11 and insert in their place the following:

"FUNDING OF FOREST HEALTH IMPROVEMENT PROJECTS.—To meet the forest health emergency now experienced on many of the Federal forest lands, the Secretary of Agriculture on National Forest System lands and the Secretary of Interior on public lands shall expend such sums as are necessary within available funds from the salvage sale fund authorized by section 14(h) of the National Forest Management Act of 1976 (16 U.S.C. 472a(h)) and the salvage sale trust fund within the Bureau of Land Management established by this Act, to design and implement forest health improvement projects. Such projects shall employ a combination of multi-resource management practices, treatments, and protections. Such projects shall be designed to accomplish the objective of improving forest health through management actions that improve stand density and composition, salvage dead and dying timber, remove or treat sources of infection or infestation, reduce excess fuels, and leave remaining vegetation in a condition designed to increase its opportunity to contribute to a healthy, productive ecosystem. In the execution of such projects, the Secretary of Agriculture and the Secretary of the Interior are authorized to use the authorities in the Knutson-Vandenberg Act of 1930 (16 U.S.C. 576) as amended, the provisions of the National Forest Management Act of 1976 (16 U.S.C. 472a), as amended, the Federal Land Policy and Management Act of 1976 (16 U.S.C. 1701 et seq.), and other applicable law.

"ENVIRONMENTAL ANALYSIS.—Any forest health improvement project found by the Secretary of Agriculture or the Secretary of the Interior to be not inconsistent with the long-term management goals and objectives of a land management plan for the administrative unit in which the activity is to occur shall be deemed not to be a major Federal action significantly affecting the quality of the human environment for the purpose of subsection (C) of section 102(2) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)). The Secretary of Agriculture and the Secretary of the Interior shall establish by regulation a policy providing for categorical exclusions from requirements established pursuant to such section for certain types of salvage based on the extent to which the salvage includes selective thinning, minimal building of new roads, minimum loss of healthy standing timber, and other justifying factors.

"SPOTTED OWL FORESTS.—Notwithstanding the Forest Service Record of Decision of March 3, 1992, 57 Fed. Reg. 8621 (March 11, 1992), the National Forest Management Act of 1976, and the National Environmental Policy Act of 1969, the Forest Service is authorized to allow salvage timber sales in Habitat Conservation Areas and other suitable habitat for the northern spotted owl on the spotted owl forests in Washington, Oregon and California outside any units of the National Wilderness Preservation System and other areas in which timber harvesting is expressly prohibited by statute, or in Forest management plans unless such salvage will adversely affect spotted owl habitat as determined by the Secretary of Agriculture.

Mr. GORTON. Mr. President, I will explain it briefly before Senator PACKWOOD speaks up. This strikes the paragraph on the second page of the amendment dealing with administrative appeals, because we have already, in the last set of amendments, determined what the appeal structure of the Forest Service would be. So there is no longer the reference to administrative appeals in this amendment.

Mr. ADAMS. Mr. President, will the Senator yield for a question?

Mr. GORTON. Yes.

Mr. ADAMS. Is that the part that starts "administrative reviews" and runs down to the place where it says "spotted owl forests"; is that correct?

Mr. GORTON. The Senator is correct. That language is stricken.

Second, it inserts, seven lines up from the end of the entire amendment, the phrase "or in the Forest management plans."

So, in other words, we will keep this out not only of national parks and statutory wilderness areas, but in the many set-asides which already are run by the Forest Service itself.

Mr. ADAMS. That goes after the word "statute" and before the word "unless"; is that correct.

Mr. GORTON. It does.

Mr. PACKWOOD addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. PACKWOOD. I thank the Chair.

I am not quite sure where to start here, having heard the reference to the Endangered Species Act as a loss of jobs through productivity and old growth, because none of those are exactly relevant to the amendment at hand.

Let us take the concept of old growth first, and that is exactly the right term. There are no original trees on this continent. There are no original trees in the world. There are older trees.

But if nothing else happens to them, eventually old trees die. More likely before they die, they burn. And the history of the world is rampant with forest fires. So let us not get into the argument about somehow we are going to be cutting down virgin forests. These are not original trees.

Second, the Endangered Species Act—and this amendment touches it only modestly—has become the hallmark of a philosophical debate about jobs, and we have not exactly touched the issue yet involved.

And before I touch it, I want to speak to what the senior Senator from Washington said about productivity and we are going to lose jobs anyway. And he talked about the number of jobs going down and disappearing in the timber industry, and indeed they are. They are disappearing on the farms, too.

At the turn of the century, however, half the people in this country were involved in feeding themselves and the other half. Today you have 2 or 3 percent of the people in this country actually involved in farming, and they are feeding the rest of us and a fair portion of the world. And we regard that as progress, because the productivity of the farm has gotten so good.

There are fewer people today in the steel industry than there used to be, and yet we turn out more steel per man-hour than we used to. The same is true of any industry. And it has happened in the timber industry. So jobs, indeed, are going to gradually disappear in all industries as productivity improves.

That bogeyman, however, should not be used to cover the problem of the Endangered Species Act. And here is the problem with the act. If someone files—and this act is petition driven, as we call it—any citizen can go out and scratch out a petition, turn it in to the Government and say, "Here, I think this bug or this flower or this bird is disappearing and will soon be endangered or threatened, and I want the Government to investigate it and reach a conclusion," and the Government is required to do it.

So you do a biological study, and at the end of the biological study, you either decide that the particular bug or plant or flower is endangered or threatened or it is not.

Let us say the study says, yes, biologically, it is threatened or endangered. At that stage, you then start to design a recovery plan to bring whatever the endangered or threatened species is back to a place where it can be delisted as being endangered or threatened. That is the recovery plan.

In the case of the timber area and the spotted owl, while you are doing the recovery plan, you set aside what is known as critical habitat, the area you have to manage very carefully to hope to bring the species back to a revitalized status where you can take it off the list.

You are not allowed to consider economics when you are designing critical habitat or the recovery plan if, and this is an important if, if the consideration of economics would lead to the extinction of the species. So your recovery plan has to be designed, not just primarily, but solely for the recovery of the species. And only can you consider economics where you can have the species recover and consider economics. If you cannot do both jobs, payment to schools, payment to counties—out.

In the case of the northern spotted owl, this is what we will be up against. And, as I say, this amendment is relatively modestly connected to this.

A petition was filed that the spotted owl was endangered or threatened. It was found it was. A recovery plan was designed. That recovery plan will soon go into effect, which will cost about 35,000 jobs in northern California, Oregon, and Washington, the bulk of them being in Oregon. These are 35,000 jobs in addition to whatever other jobs are going to be lost because of an increase in productivity.

Now, I have made my position on this very clear. I am not prepared to trade off 35,000 jobs for the spotted owl. I will go without the recovery plan and keep the jobs and take a chance that the owl would survive anyway because the recovery plan does not guarantee the owl will survive. And no recovery plan can guarantee the owl will not disappear. It is just a question of probability.

In addition to 35,000 jobs lost, it is about $170 million lost in payment to counties, because the counties get a portion of the value of the tree when it is cut. It is about $500 million a year lost because the Treasury takes money when the trees are cut. And this has nothing do with lost revenues because people are out of jobs and do not make any money. If they do not make any money, they do not pay taxes, or businesses do not make a profit so they do not pay taxes. I think it is too great a price to pay for the owl.

But now let us put that aside and get down to the actual amendment that we are talking about. We have a problem in the West, and I think we are going to have it in many other areas partially because of the drought, partially because of disease. Where as you used to fly over mile upon mile upon mile of green forests, you now fly over and it is mile upon mile upon mile of brown. It is dead or dying. We call it D&D. It has been infested mainly with bugs that are killing the trees. In some cases the trees are standing still. In some cases, because it does not take much to blow down a diseased tree, they are on the forest ground.

I want to show you an example. This is a 43-year-old white fir. It has been dead approximately 6 months. At the moment, you could still use it 100 percent to cut into lumber, or you could chip it, run it through a chipper, and what comes out, for those who are not familiar, it looks like a gigantic sawdust pile but slightly coarser. You chip it. This could be used for either one, 6 months dead, 43 years old.

This is the same species. These were cut just a month ago near La Grande, OR, same sizes, white fir. Actually, it is an older tree than the one I just showed you. This is 57 years old, dead approximately 2 years. It is useless. It cannot be used for lumber. It cannot be used for chips. It is useless.

And I wish that you could feel the weight of these. The one that I showed you first weighs about twice to two-and-a-half times what this weighs. And this is lying on the forest floors in Oregon and Washington just waiting for a match.

I want you to think of the things you use when you build a fire. Do you know the kind of wood you throw on a fire? If you throw on a light piece of dead wood, it will kindle just like that. You throw on a fresh, green, wet piece of dead wood, once you get it going, it is a fine piece of firewood, but getting it going is another matter.

The forests in eastern Oregon and eastern Washington are absolutely rife with this dry, light, dead wood laying there waiting for the match. And it is going to come. And then we are going to have recriminations in this Senate about why did we not do something.

This amendment is designed to try to do something. We would like to go in and salvage this dead timber, salvage it while it is still usable.

And I might emphasize here we import in any given year 20 to 30 percent of our lumber from Canada. We do not have enough lumber in this country anyway to take care of our own needs. At least we would take this timber that is on the floor of the forests, or standing but dying, and make lumber out of it for decks and houses and the other things we use lumber for. It is called salvage.

Now, under the Endangered Species Act, you cannot take it out of these habitat conservation areas, HHC's, we call them, part of the critical habitat. You cannot take it out of there unless it is going to lead to the enhancement of the recovery of the spotted owl. Well, they initially were said to live in old-growth forests. These forests are not going to be growth of any kind, new growth, old growth, or anything else. They are going to disappear very quickly. But it cannot be technically, legally said that, if we salvage this timber, it is going to lead to the recovery of the owl. It is not going to hurt. It is not going to help. But it does not meet the technical standard of law.

So, for the purposes of this salvage, we would like to say, let us salvage this timber. That is exactly what the amendment calls for.

I wish we could have a debate, a real debate on the Endangered Species Act and the management of our forests. This is not that issue today. That issue will come one day. It could come this year if we bring up the Endangered Species Act for authorization. It runs out at the end of this year. We may have to bring it out and battle it out on appropriations bills year by year.

I want to correct a misimpression the senior Senator from Washington left with us when he said the Forest Service is selling all kinds of timber.

First, they are not selling as much as he would give you the impression they are. But second, sales does not mean harvest. The Forest Service puts it up for sale, they go through a bid process, it is sold to the highest bidder. They usually have a number of years after they bought it to cut the timber down,

take it out, pay what they bid on it. But at that date, as soon as the sale is over and somebody wants to harvest, you are hit with a lawsuit. And at the moment most of the timber in the public forest in the Northwest is tied up in these lawsuits.

I am not one who necessarily blames the courts for this. I think the courts perhaps are correctly interpreting laws that we ought to change. Here we stand in this Congress, all the time, and we rail at the courts for making law. I think in this case they have read the act. The Endangered Species Act is very clear about recovery. They have read the law and they have said all we can say under this law is that any plan has to lead to the recovery of the species, and economics does not count if it is not going to lead to the recovery of the species. Here is an injunction.

That law we ought to change. But that is not a debate for this moment.

What we are asking here is that we be allowed to salvage timber that will have a very short life or it will not be salvageable at all. Second, if it is not salvaged soon, if it is not taken out of this forest floor, or leaning against the next tree ready to go down when the next wind comes, if we do not do that you will see a forest fire from northern California through Oregon and Washington and Montana the likes of which we have not seen in generations.

We can manage forests well. One of the good examples I can give you is an area in Oregon called the Tillamook Burn. In the 1930's a great portion of those forests burned down. When you look at the pictures out of the thirties, it is hillside upon hillside upon hillside of black snags. Nothing green. Every tree gone, a stump here and there.

In 1944, Oregon passed a bond issue and said we will reforest this area. And all of us who were young at that time went out as Cub Scouts or Boy Scouts on Saturdays and we planted trees. It was the civic thing to do.

The forest is now completely replanted. If you were to drive someone through the Tillamook Burn and show them the sights, drive from Portland toward the Pacific Ocean through the Tillamook Burn, at the end of it they would say where is the Tillamook Burn? You would say you have just driven through it.

It is now hillside upon hillside of green, 30-, 35-, 40-year-old timber. That forest is going to be managed principally, but not solely, for timber production. There are already campsites in it. You can hunt in it, fish in it. There are deer in it; all the normal game you would find in any other forest is there.

But it is a perfect example of the way you can manage a forest if you have to do it. I wish we could manage our United States' forests on the same basis, but the laws prohibit that. I say that is a debate for another time also.

I will say this. From time to time the laws are such that you are faced with one of two alternatives. You either change the law or you say for purposes of this particular thing that we want to do, by statute, given this particular situation, we will just say the law has been met.

This is what we did when we built the Alaska pipeline. There were tremendous environmental objections to it. It would not have been built with the laws then on the books, so we passed a law that simply said: By this statute we say that the building of the Alaska pipeline meets the standards of the Environmental Protection Act, period. That cut off any lawsuits. Had we not done that we would not have oil coming from Alaska today at a time when we vitally need it.

As we look at these forest laws we can do one of two things. We can change the law. Or we can say for purposes of the action we want to take right now, we are simply going to overlook the law because the situation is so critical.

All the Senator from Washington is asking is that we be allowed to salvage timber without having to prove that the salvage is going to lead to the recovery of these species. All he is asking is that we do this now to avoid an emergency. If we do not avoid it, as sure as we are on this floor today the emergency is coming and we will be here on this floor asking for an appropriation of $50 or $100 million to fight the fires and replant and relocate people whose houses have been burned down and jobs that have been lost and pointing the finger at each other and saying why did this happen?

Here is the chance to avoid this happening, hopefully. Because if we pass this today and it passes the House, we are already in the fall season. This is a modest amendment that does not answer the major problems of forest management in the Northwest. But it will allow us to put people to work who will not otherwise be at work in just the three public forests; in eastern Oregon, about 5 million acres, 5 million acres—50 to 70 percent of it is dead or dying. And people out of work crying for jobs, and trees standing not 5 miles from where they live are on the floor, not 5 miles from where they live, that would produce jobs and lessen the danger of catastrophic fire. And the present laws prohibit anything being done.

I very much encourage support of the amendment of my good colleague from Washington, who is asking just a modest step to help this country. I reserve the remainder of my time.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. MITCHELL. Mr. President, do I have time allocated under the agreement?

The PRESIDING OFFICER (Mr. SIMON). The majority leader has 5 minutes under this order in addition to 10 minutes as under leader time.

Mr. MITCHELL. Mr. President, I urge my colleagues to oppose this amendment. If this amendment is enacted, it will exempt salvage timber sales in the Pacific Northwest's National Forests from the requirements of the Endangered Species Act.

The amendment instead would prohibit such sales if the Secretary of Agriculture determines that they would adversely affect spotted owl habitat.

But timber salvage sales would be allowed under this amendment even if they would violate the Endangered Species Act's mandate to ensure that Federal actions are not likely to jeopardize the continued existence of a species. Actions resulting from sales that cause a threatened or endangered species to be killed, which would otherwise be prohibited under the Endangered Species Act, also would be allowed.

This amendment is not limited to the spotted owl. No other species listed currently or in the future under the Endangered Species Act, not even the bald eagle or salmon, will be protected from timber salvage sales under this amendment.

The Senator from Washington has said that this amendment would not harm the spotted owl or other endangered or threatened species. But what reason, then, is there to override the Endangered Species Act unless it is to be freed of its restrictions?

This amendment's response to the longstanding Federal requirements governing the management of Federal lands and the protection of threatened and endangered species is to suspend them.

U.S. District Court Judge William Dwyer, who was appointed by President Reagan, concluded much the same thing about the approach taken by the Reagan and Bush administrations in complying with these requirements.

He wrote in a ruling a little over a year ago that "[m]ore is involved here than a simple failure by an agency to comply with its governing statute."

Judge Dwyer found that the record showed "a remarkable series of violations of the environmental laws," and characterized these violations as "a deliberate and systematic refusal by the Forest Service and the FWS [Fish and Wildlife Service] to comply with the laws protecting wildlife."

The judge concluded that this was "not the doing of the scientists, foresters, rangers, and others at the working level of these agencies. It reflects decisions made by higher authorities in the executive branch of Government."

Timber sales in spotted owl habitat on National Forest lands currently are barred by Judge Dwyer until the administration complies with the requirements of the National Environmental Policy Act and the National Forest Management Act.

But the pending amendment would override Judge Dwyer's injunction and frustrate his efforts to enforce this Nation's environmental statutes. In doing so, it would reward the administration's repeated failures to comply with the law.

The result of this failure to follow the law has been costly. It has increased uncertainty and squandered opportunities to ease the impact to timber workers and their families and to protect the spotted owl, salmon, and other species dependent, in part, on old-growth forests.

Any short-term relief that might be provided to the people of the Pacific Northwest by this amendment's suspension of the Endangered Species Act and court injunctions, as welcome as that might seem to some, is likely only to intensify future problems.

I urge, instead, that the relevant committees of jurisdiction work together to develop a comprehensive plan that provides for long-term, sustainable timber harvests and conservation of old-growth forests and the species that depend on these forests, and that assists timber dependent communities.

I urge my colleagues to reject this amendment. I thank my colleagues for their courtesy.

Mr. BAUCUS addressed the Chair.

The PRESIDING OFFICER. The Senator from Montana is recognized.

Mr. BAUCUS. Mr. President, I also urge my colleagues to reject this amendment, and I say so because essentially this is a last-minute legislative attempt to override a judicial decision and override our Nation's environmental laws without any significant examination or hearing as we are beginning our home stretch drive toward recess and adjournment.

Very briefly, this amendment overturns a decision which a Federal court made holding that the Forest Service did not apply the environmental laws of our Nation adequately, therefore, granted an injunction. This amendment essentially, with respect to so-called salvage sales in owl habitat, attempts to overturn that court decision on an appropriations bill. This is not the way we should be conducting business. We have just seen this amendment roughly a couple hours ago and the amendment is again an attempt to override a decision by a Federal judge who found that our Forest Service did not comply with the law.

The Senator from Oregon says: Well, it is not the court's fault, it is the fault of the Congress. The Senator from Oregon fails to mention the third branch of Government, the executive branch. The Forest Service did not follow the law. The court now says the Forest Service must now follow the law, it must properly issue an environmental impact statement, it must follow the law so the Forest Service can, in an orderly manner, comply with their environmental statutes to decide which sales should be up for harvest and which sales not.

In addition, although the Senator from Oregon claims otherwise, this amendment does, in fact, more than touch upon the Endangered Species Act. The amendment expressly states that the Forest Service may put up for bid timber, salvageable timber in owl habitat if the Agriculture Secretary, in his discretion, decides that such salvage sale will not adversely affect spotted owl habitat. That is a process that is totally contrary to the process of the Endangered Species Act.

If the Senators from Washington or Oregon wish to amend the Endangered Species Act, they should offer amendments to amend the Endangered Species Act in the appropriate form at the appropriate time. It is clear that this Congress will be dealing with the Endangered Species Act not this year but next year. That is the time to deal with matters such as this.

In addition, it is clear that the Forest Service still can put up for bid salvageable timber in nonhabitat areas in Oregon, Washington, and California. The injunction only applies to owl habitat. It did not apply to other areas in our Nation's forests which are not owl habitat.

In addition, the Senator from Oregon talks about in the old days you used to be able to fly over the Pacific Northwest and see miles and miles and miles of forest. And now he says when you fly over, you see brown, diseased timber. I fly over the Pacific Northwest often and it is true. What you see down below is not necessarily dead and diseased timber—there is a little of that—what you see is miles and miles and miles of clear cuts. It is astounding. I ask people when they fly over the Pacific Northwest from my State of Montana, over to Idaho, Oregon, Washington, to look down, hopefully, on a plane that is not 30,000 or 40,000 feet up, and you will be astounded at the vast amounts of clear cut down below, and that primarily is what has caused diseased timber.

As a result of clear cuts, we now have even growth forests, whether it is ponderosas that are planted or whether it is other species planted. They are not multispecies forests, they are much less healthy forests, and that is why when bugs go in the timber is more susceptible to diseases. That is what has happened. It is the managing of the forest. It is partly the private industry management of the forest, and also partly part of the Forest Service management of the forest that caused the problem.

I remind Senators, essentially, we are faced with part of this problem because the executive branch and the Congress, all public officials involved, have put this problem off. Twenty years ago the States of Washington and Oregon warned us about the owl. Did anybody pay attention to it? No. Washington did not. Oregon did not. The Federal Government did not. And Congress did not. Year after year, we sweep the problem under the rug, we do not deal with it. It becomes riders on appropriations bills.

Now the day of reckoning is upon us. Now we have to finally make decisions. We put the decision off for so many years, and that is why with a very short time span facing us we are now faced with potential dire consequences. We did not plan ahead, which is to say if we adopt this amendment, we will be rewarding passing the buck, rewarding pushing off the problems, sweeping the problems under the rug, rewarding administrations that did not follow the law, rewarding, in a certain sense, incompetence and failure of not only the executive branch but, in some sense, the Congress to deal with these problems when we knew the problem was coming many years ago and we did not do so.

Finally, let us not forget, here it is, this is Thursday, we have a lot of legislation ahead of us. This is supposed to be an appropriations bill. This is not a spotted owl bill, this is not an endangered species bill, this is an appropriations bill. We should not reward, by voting for this amendment, efforts to come in at the last moment with very significant legislation which we have not seen before, we have not debated before, we do not know what its consequences really are and adopt it. We should not do so. There is a process under which we should deal with these kinds of matters.

I must say, too, parenthetically, this amendment says it is up to the Secretary to decide. On one hand I can read this as saying the Secretary cannot allow any salvage sales in habitat areas if it has any adverse effect whatsoever. I doubt that is the intent of the authors of this amendment. But that is how it reads.

The recovery plan that is operating in the Pacific Northwest will adversely affect some owl habitat. This amendment on its face could be interpreted to read as being much stronger, that it can have no adverse effect on owl habitat. I know that is not the intent of the authors. I am pointing out it is very unclear, we do not know what we are doing here, this was done at the last minute and thrust upon us and it is legislation on an appropriations bill. For all those reasons, I urge us not to adopt this amendment.

The PRESIDING OFFICER. The Senator from Idaho is recognized.

Mr. CRAIG. Mr. President, there are several portions of the remarks of the Senator from Montana that I would like to associate myself with, the remarks that we have not acted decisively over an extended period of time to resolve what is, by anyone's obser-

vation, a critical situation growing in the forested public lands of the Pacific Northwest. We saw forests grow literally sicker by the day, by the month, by the year, as bug problems built, as drought continued, as the health of those forests resulted in a building up of fuel that could at some point in time bring us to a crisis situation, but because it was an unroaded area, because of other reasons, some of them cited by my colleague from Montana, we chose not to do anything about them.

As of last night, just in the course of the last month to month-and-a-half, but as of last night in my State of Idaho, in forests—two, particularly—that are generally southern facing forests that are really experiencing the brunt of a 7-year drought, we have lost over 130,000 acres to wildfire.

Our Governor is recognizing now a near state of emergency. These are the very forests that, in large part, are the kind the Senator from Oregon talked about, that you can fly a long way and see nothing but brown, dead, dying trees.

In the wildfire environment there, a year ago we lost homes, people nearly lost their lives in one fire. It is a phenomenally serious problem. But because of certain circumstances in unroaded areas, the Forest Service largely finds itself with its hands tied for all kinds of considerations. It is a question, species of animal or plant that might be endangered?

Let me suggest that in a sick, dead, or dying forest, if that animal is there and that is that animal's habitat, that animal is endangered because the forest itself is endangered. There has been no effort because there is allowed no effort to create the kinds of uneven stands that build health and vitality in a forest environment of which my colleague from Montana spoke. That is why you will find my name as a cosponsor of this legislation.

This Congress must awaken to the fact that it has a stewardship responsibility, not just to protect the environment—that clearly is one of our responsibilities—but it also has a responsibility of recognizing that our forested lands are also a source of great wealth for this country, and that in a balanced and wise use way we can in fact assure the spotted owl and habitat for watershed quality production for the salmon and other habitat for a variety of other species that are under question at this moment as to whether their life cycle is in jeopardy.

All of that is a part of our responsibility. But our responsibility does not, in my opinion, rest by standing on the floor and suggesting we do nothing, suggesting that this is a bill out of the dark. It is not. We have held hearings. I believe the Senators from Oregon and Washington have been trying to be heard on this issue for 3 years at least, and yet this Congress would choose to do nothing. That is not good stewardship in any sense of the word. That is a sheer act of irresponsibility.

I remember several years ago when I was questioning the Director of the Park Service because of the phenomenal buildup in Yellowstone Park about a year from the time of the great fires in Yellowstone. He assured me they were taking care of the problem when, in fact, they were doing nothing.

Now, they had on the books for management purposes the concept of controlled burning, but it was only a concept because the bias in the internal management of the Park Service was that of doing nothing; let Mother Nature take her course. And she did. She nearly destroyed one of the crown jewels of the Park Service in this country.

Now, we would be led to believe that it was a grand environmental event, and that after that grand environmental event, all kinds of magnificent things began to happen. And the phoenix of the grand Yellowstone Park began once again to rise up out of the ashes. Well, truly they were ashes.

Now, I have been there of recent, and I suggest she is having a very difficult time arising.

In decades and years to come, she will make it back. But if man had had reasonable opportunity to manage, we would have a live, vital, and growing Yellowstone Park today. And that will be true in the forested lands of the West if we are but allowed to manage in reasonable fashion under the prescripts of this amendment and the laws and the procedures under which our Forest Service is required to manage today.

This is a good amendment. This does respond to the issue at hand. This will help Idaho and other States that, caught in the grip of drought, are losing their forests. This will build the kind of dynamics inside the environment that truly bring health once again, not to a dead and dying environment, but to a vigorous, young, and renewing environment that becomes the basis for the salvation of a variety of species that by our unwillingness to act are truly endangered.

I strongly support this amendment, and would retain the remainder of my time.

The PRESIDING OFFICER. Does anyone seek the floor?

Mr. LIEBERMAN addressed the Chair.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. LIEBERMAN. Mr. President, I rise to oppose the amendment offered by my colleague from Washington. Rather than helping to solve the problems afflicting management of our national forests, I am afraid this amendment would actually exacerbate those problems. Instead of fostering compliance with our Nation's environmental laws, this amendment would circumvent them.

My friend and colleague from Washington describes his amendment as necessary to remove dead and dying trees from forests in order to control the spread of forest diseases and insect pests and to reduce the chance of forest fires. But these problems are due in large measure to the failures of past forest management practices, the very practices that this amendment would continue.

As the Senator from Oregon [Mr. PACKWOOD], pointed out on November 25 of last year, 1991, when he introduced a similar amendment on the floor of the Senate, at least two of the reasons for these problems are the suppression of forest fires and the way in which these forests have been cut.

I quote from Senator PACKWOOD:

> The combined effects of fire suppression, selective harvesting of the most valuable species of trees, prolonged drought, and successive insect epidemics have led to this alarming situation.

Mr. President, I am afraid that this amendment would revive those same management practices. It would repeat the failures of the past by accelerating logging in the future.

Let there be no misunderstanding, Mr. President, this amendment will accelerate logging on our national forests. While the type of logging authorized by this amendment is called salvage, it is still full-scale logging. Its environmental effects like any other logging include destruction of wildlife habitat, reduced water quality, and erosion. Salvage logging may remove the large, dead, and dying trees, but just as full-scale logging does, it leaves behind a slash which is primarily responsible for forest fires.

Mr. President, the most disturbing aspect of this amendment probably is that it circumvents the requirements of our Nation's environmental protection laws. It would exempt numerous logging operations from the National Environmental Policy Act which requires Federal agencies to assess the impact of their actions on the environment.

This amendment would also undermine the Endangered Species Act by opening the habitat of the northern spotted owl to salvage logging and it would substitute the opinion of the Secretary of Agriculture for that of the U.S. fish and wildlife biologists as to whether or not an endangered species is at risk.

By weakening the laws which protect our Nation's environment, this amendment would reward what U.S. District Judge William Dwyer has described as "a deliberate and systematic refusal" to comply with these laws, reflecting, again I quote, "decisions made by higher authorities in the executive branch of Government."

Mr. President, rather than rewarding these actions of the administration, and the previous one, in defying the

law, we in Congress should be insisting on strict compliance with the laws that we have enacted to protect our environment and to manage our great natural resources wisely.

The Endangered Species Act has been much maligned of late with that controversy, with the controversy that presently surrounds it, and the enormous amount of misinformation that is being disseminated about it. And I find it troubling that we should be considering an attempt to change this law in some measure to rewrite it on this floor just before we recess.

If only for that reason alone, as well as the others that I have cited, Mr. President, I urge my colleagues to oppose this amendment.

I thank the Chair. I yield the floor.

Mr. MURKOWSKI. Mr. President, I have listened to the debate at length with regard to the issue that is being offered by the Senator from the State of Washington. I find this an extraordinary presentation of misstatements. What we have before this body is a concentrated effort by America's environmental community to simply stop logging on our national forests. That is their objective. That is their commitment.

I look at the gridlock that this country is in, its inability to continue to expand the economic base through sound resource jobs. I look at the issue of labor as it affects the reality associated with whether we can have sound forest management practices in the sense of harvesting timber, and I find it rather amusing because on the one hand we have the clear-cut position of the extreme environmental community.

Lacking is the voice of organized labor which obviously represents the interest of the working man and woman, whether they be in the automobile plants of America, or in the forests, or in the sawmills. More often than not, we find perhaps by coincidence the issue of the environmental community and organized labor standing side by side. I wonder if at times organized labor is being led. But I find it extraordinary that organized labor is not out in front on this issue recognizing the harsh reality associated with the men and women who depend on the timber industry for their survival, for their prosperity, for the future of their children.

I am in support of the amendment being offered by the Senator from Washington. I think anyone who would sit and read this amendment would recognize that this amendment addresses sound forest management practice. What we are dealing with on this floor is the emotional issue where one Senator will stand up and criticize the application of clear-cut procedures because that Senator does not like the looks of a clear-cut.

History will show that the area from northern California through the State of Oregon, through the State of Washington, on up into southern British Colombia have been devastated for generations by forest fires that burned out of control until they stopped as a consequence of rainfall. Then along in the early 1800's those fires began to be checked.

We talk about ancient growth. it is a misnomer. There is no such thing as ancient growth. There are some timber stands that are older than others. The senior Senator from Oregon portrayed to the Energy Committee some time ago charts showing forest fires that took place generations ago that were uncontrolled. These charts clearly showed that the timber we look at today, whether it be ancient growth or old growth, is second, third, or fourth growth.

A forest is like a wheat field, only the cycle is longer. The trees grow, the trees die. the environmentalist say my State of Alaska is full of virgin timber. Surely it is virgin timber, yet 30 percent is dead or dying. You go in the forest, walk through areas, that have never been logged, however you see old logs decaying and dying.

What we are talking about here is a salvage fund authorized under the National Forest Management Act to improve the forest health, through management actions, improve stand density, compensation, salvage dead and dying timber, remove or treat sources of infestation, and reduce excess fuels that cause fires.

Good heavens, anybody that is in favor of sound management has to support this bill. Yet the other side is coming from the environmental point of view; says absolutely nothing; it is all right evidently for the beetle to kill the spruce but it is not all right for mankind to go in there and try to help the forest, remove the dead vegetation, the dead trees that are dying, use them for something productive, and stop the movement of the spruce beetle.

It is just incredible the general concept that exists in this body of Members who are emotionally moved to believe that the concept of clear cuts are terrible. Clear cuts are a practical management technique used in harvesting the forest. As you fly over all parts of the Cascades in the Pacific side, you see clear cuts. They have been occurring for decades. It is a practical technique. The second growth is much denser, much better than the initial growth.

That is the problem we have in Alaska where all we have is a virgin growth; no second growth of any consequence. The few areas that we have cut as late as the Second World War have tenfold per acre the volume of timber. It is new timber. It is healthy timber.

These are myths that we are dealing with in this body. But yet they emotionally rise up and say this is some kind of charade, this is some kind of an effort to pull the wool over the eyes of an issue that really speaks for itself, and that it is that somehow this is not good forest management practices.

This is good forest management practice. It is management practice professed by professionals that spend their lifetime in the forests recognizing the adequate way to harvest the resource.

If we look at reality, in my State of Alaska, in 1991 an aerial survey detected the spruce bark beetle infestations on approximately 375,000 acres. That is 585 square miles. That is 8½ times the size of the District of Columbia. That is an increase of more than 130,000 acre over levels that were infested in 1990.

On the Kenai peninsula in Alaska the spruce bark beetle has killed trees on more than 700,000 acres since 1970, or some 35 percent of the forested lands on the peninsula. How big is that? Nobody around here really knows. It does not mean anything to them. Well, 700,000 acres is 1,093 square miles. That is an area as big as the State of Rhode Island. That is just in one area of my State.

The greatest threat to the health of the Kenai peninsula forest is the population of the spruce beetle. We have been unable to address it because of the demand of the environmental community who said "Don't touch that timber." Is that sound forest management practice? The beetle simply moves on to the next timber.

I am giving you figures of the spruce beetle only. There are many other areas of disease in Alaska.

We have not talked much about blowdowns. The wind does not blow much except in this Chamber. But in reality, in the forests of Alaska, the wind does blow. We had billions of board feet lost in the Thanksgiving blowdown of 1968. Millions of acres were lost. What happens to that timber when it falls down? It begins to die, to deteriorate. There are those that say that is part of the natural evolution, and it should be left alone. That is hypocrisy.

It is all right for the beetle to kill the timber but man cannot salvage it. Come on. That is ridiculous.

I think the environmental community should face up to its responsibility concerning the problem and try to solve the beetle problems in my State, the blowdown, the diseased timber on the west coast of the United States. There is no reason to have these lost jobs, the soil erosion that is a reality, and the increased fire hazards associated with it.

What we need is to move out of this myth of emotion and bring sound, scientific knowledge into our forests.

I support the Gorton amendment.

It allows for timber salvage in Alaska.

It allows expedited environmental review of salvage plans.

And it allows expedited environmental review of salvage plans.

And it allows timber salvage in spotted owl habitat.

I support all these improvements in forest management practices.

I implore my colleagues to apply basic reason to the issue before us.

Mr. WIRTH. Mr. President, it was a privilege to chair a hearing of the Public Lands Subcommittee of the Energy and Natural Resources Committee on a version of this amendment.

This provision is different in some respects from the one we had the hearing on. The initial amendment was focused just on the salvage problem in eastern Oregon and eastern Washington. That was what we were attempting to focus on in the legislation upon which we had a hearing.

There is, from the testimony that we heard, a significant problem there. There is a lot of beetle kill. There is a significant salvage problem, and that was described to us by Mr. Beuter, the Assistant Secretary of Agriculture in charge of Forestry.

So as we went through the hearing, I asked Mr. Beuter—and I will read from the transcript, if I might. I asked Mr. Beuter:

What is in the law now to preclude you from what you say has to be done in the way of salvage? Why are you not already doing this? If this is important to do, why are you not already doing it?

In other words, do you need this legislation in order to do the salvage? Mr. Beuter's response was:

We are already doing it.

Later on, Mr. HATFIELD came in and said:

Then why have you not been able to execute your preparation in fiscal 1992?

Mr. Beuter: The answer to the question is there is nothing in this amendment that would enable us to do things that we are not already doing.

In other words, the Forest Service can already do all of this salvage. Forest Service said they do not need this language. They can already do the salvage sales they need to do.

In fact, Mr. Beuter told us that they already have a significant amount of activity in the pipeline now.

So we have established, through the hearing, very clearly, on the initial and more modest amendment, that it was not needed. The Forest Service can already do this. Mr. Beuter, the Assistant Secretary in charge of Forestry, told us they can do it.

Therefore, you have to say to yourself, Mr. President, there must be something else in here; there must be some other reason for having this amendment in front of us today. It is not because of salvage, because Mr. Beuter is already saying we can already do all of these things. So what is the other reason for this amendment?

Well, we sort of uncovered the fact that the initial amendment did not make a lot of sense. Thay do not need it. So the amendment has been changed, and what do we find now? We find now that the original amendment was a Trojan horse. Open up the Trojan horse, and out come the soldiers. What are the soldiers?

One, a NEPA waiver. We have in this a waiver that says in forests all across the country—not just where we were originally told the severe problem was, in eastern Oregon and eastern Washington. We found there is a NEPA waiver so you do not have to do an environmental statement to do salvage sales. Say there is a major blowdown or a major beetle kill; you do not have to do an impact statement on it cutting that timber. You do not have to go through a public review process. If the public thinks you should not be doing this in their community, it need not be reviewed by the public. You do not even have to do a broad public notice.

That is what is in this Trojan horse. Effectively allowing the Forest Service not to do an EIS or all of the other items we ought to do in an accountable, democratic society.

What this is is the timber industry coming around and saying: we want to be allowed to go in there without these formal agency reviews or public comment. I am reminded of the Council on Competitiveness. You know, the back door to get out of environmental and public safety regulations; the back door in the White House. This is another back door.

We should not do this. There is no reason for doing this. We do not need it. The Forest Service told us they did not need it. What are we doing? We are making a different kind of a statement about what we think a democratic society ought to be. We are making a different kind of a statement about the checks and balances in a democratic society. We are making a different kind of a statement about public review. We are making a different kind of a statement about public notice.

Mr. President, I cannot imagine that my colleagues are going to vote to support this. This does not have anything to do with salvage rules±.

The Assistant Secretary in charge of forests told us—I read the transcript—that they are already doing it. He said: "We are already doing it," and "The answer to the question is that there is nothing in this amendment that would enable us to do things that we are not already doing."

What is afoot here is a totally different agenda, which is to waive the National Environmental Policy Act; you do not have to do an EIS, public notice, or a public review process.

And then, to add insult to injury, at the end of this comes the very clear reason as to what this amendment is all about. We have a section called "The Spotted Owl Forests." And the purpose of that obviously is to waive the Endangered Species Act. That is what this is all about. Let us waive the National Environmental Policy Act and get rid of the Endangered Species Act.

That is what this is about. This is a Trojan horse, a fake; this does not have anything to do with being able to do salvage sales. It is not a salvage agenda. The Assistant Secretary told us they can already do everything that has to be done in terms of salvage.

Mr. President, I ask unanimous consent to have printed in the RECORD pages 37, 38, and 39 of the testimony, when Mr. Beuter, the Assistant Secretary of Agriculture, came up and told us—this is a transcript of the hearing of last week—they can already do these things.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[Transcript of hearings before the Subcommittee on Public Lands, National Parks and Forests, U.S. Senate, July 28, 1992]

HEARING ON THE HEALTH OF THE EASTSIDE FORESTS IN OREGON AND WASHINGTON; AND AMENDMENT #1442 TO S. 1156, THE FEDERAL LAND AND FAMILIES PROTECTION ACT OF 1991

Senator WIRTH. Thank you very much, Mr. Jamison. I think what we might do is proceed to questions and then the other witnesses that are here, I understand, are prepared to help or add their perspective in answer to the questions.

Can I ask you, first of all, is the Forest Service now conducting any salvage operations in this impact area described by Senator Packwood?

Mr. BEUTER. Yes. The Forest Service is doing the best they can to get out salvage. Some forests are further ahead than others, but there is an extensive salvage program underway in Eastern Oregon.

Senator WIRTH. What does the amendment allow you to do that you currently cannot do?

Mr. BEUTER. Well, the amendment would confirm commitment, to some extent, to speed up the process that these activities are part of the total forest health package.

Senator WIRTH. In other words, you can already do this, and the memo would just encourage you more to do this. Is that right?

Mr. BEUTER. Well, the amendment firms up the need. The thing that is not widely understood is that time is of the essence in these activities.

Senator WIRTH. Well, is there anything in the law now that precludes you from doing what the amendment calls upon you to do?

Mr. BEUTER. To some extent, I think much of what this amendment has is already allowed under the law.

Senator WIRTH. What is in the amendment that you cannot already do? You have spoken to the urgency of the problem, as has Mr. Jamison. What is in the law that precludes you from currently doing what you have argued urgently requires to be done?

Mr. BEUTER. Well, the amendment addresses, for example, the aspect of time being of the essence, the point that we may need more of an understanding—

Senator WIRTH. What is in the law now that precludes you from doing what you say has to be done? In other words, why are you not already doing this? If this is important to do, why are you not already doing it?

Mr. BEUTER. We are already doing it.

Senator WIRTH. Then what is in the amendment that we are having a hearing on and going to a lot of trouble to consider—what is in the amendment that provides you with authority that you do not already have or obviates items that are in the law that currently preclude you from doing this?

Mr. BEUTER. Well, I think to some extent, I think, Cy Jamison pointed out what the law is explicitly with regard to BLM.

Senator WIRTH. Well, just from the perspective of the Forest Service. Now, presumably you all have been attending to this problem and it has been of concern, now what is there that this amendment does that you cannot already do? May some of your colleague have an answer they can give us.

Senator HATFIELD. Will the Senator yield for just a moment?

Senator WIRTH. I would be happy, Mark.

Senator HATFIELD. Mr. Beuter indicated that they are preparing for fiscal year 1992 timber sales as far as salvage is concerned. Maybe we can get to the crux of that question by asking of that 400 million board feet that you have prepared or have recommended for salvage in 1992, how much of it has occurred, and what are you preparing for 1993? Some 450 million more board feet, correct?

Mr. BEUTER. Yes.

Senator HATFIELD. Then why have you not been able to execute your preparation for fiscal year 1992?

Mr. BEUTER. Well, the answer to the question is there is nothing in this amendment that would enable us to do things that we are not already doing. It would speed up the process.

For example with regard to appeals, with regard to a clarification of the NEPA requirements, that would be necessary to—

Mr. WIRTH. Mr. President, this amendment does not have to do with salvage or with the eastern part of the Cascades. It is not needed to do salvage sales in eastern Oregon or eastern Washington. It is the timber industry attempting to loop around and solve what it believes is a problem: public notice and public review. They are saying we do not want to have that. We just want access to the national forests, and not just in Oregon and Washington, but all across the country.

This is also about the waiver of the Endangered Species Act, a totally different agenda, which I know that the Environment and Public Works Committee is reviewing. It is an extremely complicated and difficult issue.

The Endangered Species Act is the most aggressive anywhere in the world, protecting species. Believing in the protection of species, believing in biodiversity, some of us think that his should be a resounding and wonderful and proud commitment by the American people. Others want to erode it away. Let us debate that.

I know the Senator from Montana is having hearings on this, and is looking at this. But let us not undo this act in an amendment to an appropriations bill, under the guise of being able to take care of some salvage sales.

In summary, Mr. President, this amendment has nothing to do with salvage and salvage sales.

The Assistant Secretary of Agriculture told us that. I have put his quotes, the questions and his answers, in the RECORD.

Senators should be aware that this amendment applies to national forests in their States. If it passes, environmental impact statements can be waived; public notification can be waived. I cannot believe people want to go home and say, "I waived public notice" to people who live around the forests. "Do not worry about the timber guys who will be there. Let's get rid of the Endangered Species Act and slip that through the back door, too."

If I have not made myself clear, I hope we vote against this amendment.

Let me go through this again, Mr. President. I had the privilege of chairing a hearing on an earlier version of Senator GORTON'S provision. That earlier provision only affected timber salvage sales in eastern Oregon and Washington—this proposal we have before us today affects all national forests, everywhere.

Basically, his proposal waived the National Environmental Policy Act, waives the right to administrative appeal, and limits judicial review for these sales.

At the time of the hearing, I supposed that the purpose of this was related to the very specific situation in eastern Oregon and Washington, where there's been a long drought that has caused some serious insect infestations in the weakened trees there. Salvage sales, as most of my colleagues know, are sales of areas of forest designed to harvest dead or dying timber before it rots or burns.

So we know that there has been a big increase in forest health problems on the east side of the Cascades, and there might well be far more need—or at least opportunity—for salvage sales than there has been in the past.

Now, the remarkable thing about all this is that when I asked the Forest Service witnesses at the hearing if the bill was necessary to accomplish a very ambitious program of salvage sales in these forests, they said no, it wasn't. They said they had a large volume of these sales in the pipeline, and that they were coming along just fine. That was the testimony of Assistant Secretary Beuter.

That's not to say that there aren't controversies about some of these sales—I know for a fact there are, and there will be. But the key here is that the Forest Service did not believe these waivers of existing law that all other timber sales across the country have to meet, and the restrictions on appeal and court challenges, were essential to their program of selling dead and dying timber on the east side of the Cascades.

Given that, Mr. Chairman, I hope we will refrain from rewriting these laws on an appropriations bill, given my conclusion that there was no urgent need to do so.

There's no urgent need to do so in the Northwest, where we know that there's been a far greater forest health problem than normal. So it is even more unlikely that we would need to do so everywhere else in the country.

Now, Mr. President, there's one more thing in this provision, which goes way beyond where Mr. PACKWOOD'S original bill went. It says that the Forest Service shall allow salvage sales in spotted owl habitat.

Now, remember that the salvage crisis was supposed to be on the east side of the Cascades—and that the owl is on the other side of the mountains, on the west side. And remember that salvage sales, while they are directed at cutting areas that have dead trees, aren't restricted to dead trees. They don't go in and just harvest dead trees. No, they clearcut, and the timber companies are happy to take many living and perfectly healthy trees in addition to dead trees. In many salvage sales, the healthy trees far outnumber the dead trees.

So here we have an override of virtually all our environmental laws, virtually everything, on the basis of having some dead trees in an area. Frankly, Mr. President, that would be a huge step backwards in our approach to our national forests. I urge my colleagues to oppose this amendment.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Who seeks the floor?

Mr. ADAMS. Mr. President, I rise to ask how much time remains on each side.

The PRESIDING OFFICER. Different amounts of time have been allocated to different individuals: Senator PACKWOOD, 12 minutes; Senator BAUCUS, 2 minutes, 20 seconds; Senator CHAFEE, 10 minutes; Senator MITCHELL, 40 seconds; Senator GORTON, 10 minutes; Senator CRAIG, 2 minutes; Senator BURNS, 10 minutes; Senator ADAMS, 2 minutes.

Mr. ADAMS. Mr. President, I see that Senator CHAFEE has arrived on the floor, so I will yield the floor so he may speak.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized.

Mr. CHAFEE. Mr. President, before I begin, I remind my colleagues that, once again, we are proceeding to legislate on an appropriations bill. That was an argument that was used against the Fowler amendment last evening. I voted to table the Fowler amendment because of that, and it seems to me that we ought to remember that when there is legislation on an appropriations bill, whether we agree with it or not, we should make some attempt to maintain a consistent position.

I will admit, Mr. President, that I probably have not been totally consistent on this myself. But, nonetheless, I inherently do not like legislation on

appropriations bills and, to the extent possible, try to avoid them. And that, as I mentioned, was one of the reasons that I voted to table one of the Fowler amendments.

It seems to me that this is a very, very complicated issue that we are dealing with. Certainly, it is not an original issue. The Senator from Oregon and the Senator from Washington have dealt with this for many years. I know it has been an extremely troublesome one, and, of course, the root of it is that the forest officials, U.S. Government officials, have failed to abide by the law. And that is the real problem. That is what provoked the Judge Dwyer injunction, as we are all aware. I do not think anybody would dispute that. That is why it came about. It is too bad that in the beginning they did not obey the law and move along in a methodical fashion, or perhaps we would not be involved in all these difficulties now.

Mr. President, this amendment by the Senator from Washington would waive or affect—and I use that word "affect" because, clearly, there is a dispute on this, and in discussions with the Senator from Washington, he has indicated that he does not believe that his amendment affects the Endangered Species Act. I have trouble reading it that way, and it just indicates that people can sincerely disagree on the provisions of legislation.

But I do not think that the proponents of this measure would disagree that it waives the National Environmental Policy Act or the National Forest Management Act. What it would do is allow the harvesting of timber in an area which has been determined by scientists to be important habitat for an endangered species, in this instance the spotted owl. There would be a gain, and there is no question about that, and that is, of course, obviously the reason that the distinguished proponents of this measure are so fervently for it. How long term the gain will be I do not know. Obviously, they are from the area.

I just wonder if the real problems that have arisen in the area—which I will not claim great familiarity with—have not come out because of really disastrous policies as well as cutting in these national forests. Now, the areas available are reduced and so, for the preservation of jobs, it it sought to open up these lands.

I recognize clearly that that is not the measure directly before us now. The measure directly before us now deals more promptly with the so-called fallen timber.

I would like to first state that I sympathize and can understand the problem that the Senator from Washington has in his desire to help those communities. I understand that the Senate appropriations bill provides local governments with some extra money to replace the timber receipts that they are losing, but clearly that is not enough and clearly it does not provide for the money that would come from the jobs available should there be a thriving logging community available.

Mr. President, I see nothing wrong with allowing salvage sales that are truly environmentally sound. In fact, they are being allowed. The information that I have is as follows: Over the past several winters in Oregon and Washington, 700 million board feet of timber have blown down. According to the Forest Service, 75 percent of that, or 515 million board feet, have been or soon will be sold for harvesting. Only a small amount, 25 percent of the total 115 million board feet, of this timber is located in spotted owl habitat conservation areas. These areas were defined in the Interagency Scientific Committee report, the so-called Thomas report, as important habitat for the owls where timber harvesting should not occur. A separate technical committee of scientists evaluated the proposed salvage sales in this area and rejected them as inconsistent with the Thomas report. The other salvage sales have been allowed to go forward.

It seems to me one point that is important to note—and I am not quite sure why the proponents did this—is that the application of this amendment, as I read it, is not limited. All Forest Service and all BLM lands, not just those in the Pacific Northwest, are covered by the first part of this amendment.

This amendment would exempt any qualifying salvage sale from the requirements of the so-called NEPA, National Environmental Policy Act, and direct the Forest Service to prepare environmental assessments rather than the full environmental impact statements for these sales. Already under the National Environmental Policy Act, we have provisions for the preparation of assessments in lieu of full-blown environmental impact statements in appropriate circumstances.

The question again becomes why are we treating salvage sales differently from other sales? The nature of the forest health improvement projects—and those are words directly from the amendment as proposed by the Senator from Washington—forest health improvement projects that would be exempt from NEPA under the Senator's amendment is not well defined. The amendment states only that the projects should "improve forest health through management actions, including salvage."

Mr. President, this is different from other legislation dealing with this matter. For example, in the House, in H.R. 4980, the bill there limits the salvage sales that would be eligible for the expedited review that I have discussed under the so-called NEPA. It would limit those salvage sales for expedited review to lands on which 60 percent or more of the trees are currently dead or expected to die soon, where the trees threaten human life or property or increase the risk of fire, and where salvage sales would improve the long-term health of the forest.

The House bill is extremely broad. There is no question about it.

But it has some criteria. The Senate's amendment gives the Forest Service unlimited discretion to use salvage sales as a method to open unenvironmentally sensitive areas to full-scale logging activities.

Now I know there will be a dispute here; the argument, that they are not large-scale logging activities, they are salvage sales.

But I think we ought to stress, Mr. President, that salvage sales are not necessarily environmentally benign. Salvage is done in many cases by clear-cutting and can destroy or degrade habitat or damage watersheds. Salvage sales require the construction of roads and the use of the same heavy equipment as other timber sales and can indeed cause environmental harm.

And I might point out, Mr. President, that when we are talking about what these forest health improvement projects are, and I quote: "Such projects shall be designed to accomplish the objectives of improving forest health through management action that improves stands, density and composition." I can only believe that stands and densities go beyond salvage.

Now, Mr. President, at a recent hearing before the Energy Committee on the salvage sale issue, the assistant Secretary of Agriculture, Mr. Beuter, testified that the Forest Service already has adequate statutory authority to conduct salvage sales in national forests and that this amendment is not needed.

In addition, the Appropriations Committee report accompanying this bill already directs the Forest Service to "pursue aggressively salvage opportunities while complying with existing environmentally mandates."

It seems to me this is a fair and reasonable approach. That is why I question the need for this sweeping amendment.

Finally, Mr. President, I think we should take a long look at the consequences of our actions.

I must say it is no secret to anybody in this body that I have been a long-time proponent and supporter of the Endangered Species Act and those acts that are supportive of the direction of the Endangered Species Act. I know that the Senator from Washington will vigorously argue that we are not dealing with the Endangered Species Act. And, indeed, in our discussions he had indicated that to an extent this may well be strengthening of the act, although I have trouble following that argument totally.

The PRESIDING OFFICER. The time of the Senator from Rhode Island has expired.

Mr. CHAFEE. Mr. President, I ask unanimous consent to proceed for 2 more minutes.

The PRESIDING OFFICER. Is there objection? The Senator from Rhode Island is recognized for 2 additional minutes.

Mr. CHAFEE. Mr. President, this is part of an issue that has, as I mentioned before, been before us for some time.

It is my fervent hope, Mr. President, that somehow, in that section of the country that is so important to all of us and to our Nation, we could arrive at a solution that has those forests producing what we call sustainable yields. Our environmental laws, I believe, allow ecological sound salvage sales to go forward. I do not believe this amendment is necessary. I am not in favor of it.

But, Mr. President, regardless of what happens with this amendment, which I shall vote against, I hope that a long-term solution can be developed so every year we are not back on this problem.

Certainly everything I could do with the limited powers, whatever I might have, I would devote to being able to achieve that goal. Because I hope that as we lecture the rest of the world, and particularly the South American and Central American nations, that there is not necessarily a choice between the environment and jobs.

That is the theme we are carrying. That is the language we use in connection with Amazonia. Those of us who have been there, have met with the Brazilians and others. And all we are saying is, it is not necessarily a conflict between environment and jobs. I hope we could put behind us this conflict that seems constantly to be there in this particular section that says it is either the environment or jobs. And, indeed, some have said, and very sincerely, that if it is a choice of the spotted owl or if it is a choice of jobs, it is a tragedy, but the spotted owl has to go. So be it.

Well, I hope that is not necessarily the choice we have to make. I hope we do not have to destroy the owl. And by the way, it is not just the owl. There is a whole series of other species including the salmon, as those who come from the area well know, that could be threatened as well.

The PRESIDING OFFICER (Ms. MIKULSKI). The Senator's time has expired.

Mr. CHAFEE. If I might have 1 more minute.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CHAFEE. Madam President, clearly if we destroy the forest there will be no jobs. Once again, the solution to this problem is sustainable yield, and I hope we can all work toward that goal. I thank the Chair.

Mr. BURNS addressed the Chair.

The PRESIDING OFFICER. The Senator from Montana is recognized for 10 seconds.

I am sorry. The Senator is recognized for 10 minutes.

Mr. BURNS. Thank you, Madam President.

Auctioneers sometimes can get it done in 10 seconds, but we will not go into that mode today.

Madam President, I doubt if I will take my 10 minutes. I just want to remind this body that no matter how much logic you put up about this issue—and I am like my colleague, Senator CHAFEE, I wish there was some way that we could resolve this and the issue would go away. But we cannot, because there will always be those who will crowd the system just a little bit. And as long as that goes on, you will always have controversy.

The only way that you are going to have this problem go away is to put all the public lands into private lands, just sell it. And then we can hound on the private landowner and we can encroach on him.

This is not an owl issue. This is not even an endangered species issue. This is a common sense issue, that we take the dead and dying trees and the windfalls that are on the ground and make some use of them for the American people, of which it is coming off of their lands. That is the issue here. There is no other issue.

Now you can put a lot of words and you can make a lot of flowery speeches, but basically that is the issue: Can we use those dead and dying trees now, and the blowdowns, to the benefit of this society? And I think that is one of the calls of public lands and how they are managed, is to be used to the benefit, highest benefit of the American society. So it is not an Endangered Species Act.

I do not know how many people saw the fires of 1988 across Montana. I think I heard the Senator from Idaho awhile ago sort of describe to you what happened in Yellowstone Park. Let me tell you that we will never see Yellowstone Park again like it was prior to 1988. There are people who will say that was a great environmental event. I can take you up there right now and tell you it was not a great environmental event. In fact, if there is anything, there is a sin being committed there right now because it is overgrazed. They have too much livestock on it. Too many buffalo, too many elk, too many everything, and we are in a dry year again.

So, basically, it is this: They cannot harvest the dead and dying or the windfalls in wilderness-designated areas or in areas where there is sensitive wildlife habitat without some consultation with the U.S. Fish and Wildlife Service. And it does not make sense. In Montana where we have the problem with the mountain pine beetle, it does not make sense just to let that rascal go clear through our forests and take them all. It does not make sense at all.

If we had a disease in this society, we would not allow that to happen if it was among people. If they were the dead and dying, we would be taking some action.

I cannot help it. I do not know why we would allow this on our public lands and among this precious resource that we have that benefits so many Americans.

There are three things that make a forest fire. Take one of them away and you do not have a forest fire or a wildfire. You need three things: Air, fuel, and heat. That is all you need—fuel. And what we have in these blowdowns, these dying and dead trees, is a very, very explosive fuel that when ignited, it just goes. We have seen the fires of the Bob Marshall Wilderness, and of Yellowstone Park—we could not get those fires under control at any stage because of the extreme heat and the extreme amount of fuel that was available to burn in the underbrush. So, if science tells us the endangered specie has a place, then science would also tell us that we should harvest the dead, dying, and the windfall.

By the way, those folks who would want to apologize to those families in those communities who kind of need the job, I do not see those folks going out there and looking those people in the eye and saying: I am sorry, we are not going to let you do it.

Why do you not drive down to one of those little communities one time, look at their families, and walk into their schools and tell them: No, we are not going to let you cut. We are not going to let you salvage harvest.

What little money they get from the excess profits tax or whatever that comes back to the communities does not mean anything when you talk about payroll, paying for pickups, homes, schools, raising kids, and putting food on the table. They do not even touch it.

So I would want those who would be a little skeptical on the purpose of this to go down there and talk to those families. I do not see a lot of folks doing that, jumping in the car and going down there and meeting with those folks—and especially with some of the very good families who are members of these wood products unions, members of the AFL–CIO, who support this amendment. You go down and tell them that they cannot work, they cannot cut, and they cannot provide for their families.

So, this is not an endangered specie debate. It is not even close. It is a debate on whether we should go in and help Mother Nature out and take out

those dead and dying trees and get these forests back in the production that they should be in. I support this amendment and I urge my colleagues to do so.

Madam President, I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon has 12 minutes.

Mr. PACKWOOD. Madam President, I want to correct some misimpressions that have been left here today. First there is reference to clearcutting by several speakers, as if it were evil. Let me explain what clearcutting is as opposed to selective cutting. Clearcutting is where you will take 10, or 20, or 30, or 40 acres and you cut all the trees in it, and when you are done you replant. You have, as you see from the air, or anywhere else, a large square—usually a square, not always. Then next to it 10, 20, 30, 40 acres of green trees that have been left. Then you will see another 10 or 20 acres that have been clearcut. Those are called clearcuts. You do not clearcut hundreds of miles. You do it on a patchwork basis.

The reason you do it, and it is done mostly on the west side of the Cascade Mountains—the Cascades in Oregon are to Washington what the Sierras are to Nevada; it is a string of mountains. You do it on the west side because the principal timber is Douglas-fir and that does not grow well in the shade. It is called shade intolerant. Indeed, if you clearcut it, it would grow—it would grow, but it would be inferior than if you cut it and it has direct Sun when you replant it. When you have pine it is not normal to clearcut. Pine trees are not shade intolerant. You selectively clearcut, take a tree here, there, there, there. It is a different form of what they call silviculture—management. The clearcut looks bad and indeed clearcutting can be done badly. If you are on a slope and there is a stream at the bottom of the slope and you clearcut right down to the stream, you are going to have a whale of a lot of mud and silt, when it rains, going down that clearcut into the stream. That is bad management practice.

But the reason for the clearcut is so that you can grow your forests better.

The Senator from Montana and the Senator from Rhode Island made reference to the Forest Service was not following the law. Perhaps they were not, although it is not quite as easy as all that. Up until the passage of the Wilderness Acts, they really only started in the midsixties, we managed all of the public land on what we called a multiple-use basis and we directed the Forest Service, the Bureau of Land Management, to manage it for recreation, stream enhancement, fish and wildlife protection, timbering; and they would set aside some parts for recreation, some parts for stream enhancement, and they managed it on a multiple-use basis. We said to them, this is the goal of the timber you are to get out, and we set goals. Each year would be so many feet—board feet as we call it.

That worked, by and large, pretty well. But now here is where problems started. I said earlier we do not produce enough lumber in this country to meet our needs. We have for the better part of a quarter of a century imported anywhere from 20 to 30 percent of our lumber from Canada because we do not produce enough in this country. Let us say the Forest Service, as an example, had 20 million acres they were managing and they set aside 4 million acres of it for recreation, for nontimber purposes. So they had 16 million acres for timber. Out of that they figured they could produce a certain amount of board feet, managed on what we call a sustained yield basis: you cut the trees, you plant the trees, you cut the trees, you plant the trees.

Then Congress comes along and says of that 16 million acres we are now going to put 3 million of it in wilderness in addition to the 4 million that has already been set aside for other purposes. It is clear now you are not going to get as much lumber off the remaining 13 million acres as you were going to get off the 16 million acres. And over the last 20 years we have been setting aside for nontimber purposes more land.

Then along came the Endangered Species Act in the midseventies. The Forest Service was not used to dealing with it. It had not had it on the books before and the Forest Service is still trying to produce as much lumber to meet our needs as they can within the bounds of what they regard as respectable forestry. And there is an honorable difference of opinion on the issue. If you take two Ph.D.'s from any school in the United States who do not work for the environmentalists or the timber companies and say: How many trees can we cut off this land? They will differ when you give them the same goal: Sustained yield, trees forever. They will differ in their judgment as to how many trees you can cut. It is an honest, academic, fair difference.

The Forest Service is trying to produce the levels of timber that we had told them to get. But, on top of that we impose the Wilderness Acts, and Endangered Species Act, and Environmental Protection Act and other things, things that limit their ability to do it. And I am not going to argue whether they ran afoul of the law or not. The courts said they did. This was not malicious, evil, greedy civil servants—because that is what they were. Career Forest Service people, trying to do the public good. But the court said you are not managing the forest properly in accordance with the Endangered Species Act or the Environmental Protection Act, or the Wilderness Acts, or all the other acts we imposed upon them.

I am not going to quarrel with that. I think the courts have probably interpreted the laws correctly and if we do not like the laws we should not blame the Forest Service because they did not quite understand them as they were being passed. We should say if we do not like the laws the way the court is interpreting them we should change them; not blame the courts.

So that is one. Forest Service, if they did violate the laws they did not do it maliciously.

Second, we are told we should not legislate on an appropriations bill, and that is indeed the rules of our Senate. The Endangered Species Act, however, which I would like to change, runs out this year. I thought we had the votes in the Senate until Senator GORE was selected as a Vice-Presidential nominee. He is perhaps the leading environmentalist for the Democrats, and I do not think, given the ticket this year, they would want to change the act in the midst of the campaign.

But our only chance to change it is on an appropriations bill if we want to do it this year. The act is not going to come up for renewal and it runs out this year. It is a catch 22 situation, you tell us not to do it on this bill but then they do not bring up the act, which is the act itself, for renewal. So what do you do, say tough luck? Well, we are just trying to use whatever vehicle we can to do this amendment.

Last, and my good friend from Rhode Island said I hope it does not have to come down to a choice between the owl and jobs—well, that is what it has come down to.

I want to emphasize again, under the Endangered Species, Act, if any kind of bug or plant or bird is declared threatened or endangered, then the Government has to come up with a recovery plan that leads to taking that, in this case the owl, off the endangered list. You have to have a recovery plan that makes the population of owls come back up.

You are entitled to consider economics, jobs if you want to call it. It you can consider jobs and make the owl come back up so it is no longer endangered, you can consider both of them. But you cannot consider jobs if, in order to do it, you have to shrink the recovery plan to such a level that the owl might disappear. You cannot then consider jobs.

When the recovery plan for the owl was designed, there were a number of areas that were left out of what we call the critical habitat. You can continue to log on those because it was determined by the Fish and Wildlife Service that we could have a recovery plan and leave some areas out. But they finally said, we have reached a critical threshold below which we cannot go in the management of these lands or the owl will disappear.

So they drew a plan, as all of this acreage that is no longer going to be on

limits for forestry—my hunch is in a few years not on limits for anything else—and it is going to cost about 35,000 jobs in northern California, Oregon, and Washington and it is an either/or situation. We are not down now to the situation where maybe we can protect the jobs and the owl. Any land that can be left out of the recovery plan and still used economically has been left out.

So the question becomes: Is the owl worth 35,000 jobs—and I will emphasize—family wage jobs? These are not minimum wage jobs. Many of them are unionized jobs. That is why the unions are so strongly on our side of this issue. These are jobs for kids coming out of high school, 18 years of age, and will pay anywhere from $8, $9, $10 an hour starting wage, and in a town of 15,000 in southern Oregon, that is not a bad job.

So while my friend from Rhode Island wishes this was not a contest between jobs and owls, it has become one and you have to make a decision as to which side you are going to come down on. I simply said if I am going to throw 35,000 decent people, 40-, 45-year-olds who worked in the mills and woods, 20, 25 years, married their high school sweetheart, had a couple of kids, they vote, bowl on Wednesday night, and teach their kids to hunt and fish and they are good environmentalists; they are out, told to be retrained, and go to work in the electronics industry 300 miles away for $6 an hour when they are making $15 an hour, that is the choice.

That is not the choice this amendment poses, but it is the choice that eventually we will have to make. Those who will not change the Endangered Species Act cannot attempt to finesse it by saying I hope we do not have to make a choice. We do have to make a choice. The question is who is going to come down on the side of people? Who is going to come down on the side of birds? On occasion, those are the hard choices you have to make.

I thank the Chair.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Montana has 2 minutes.

Mr. BAUCUS. Madam President, this amendment essentially only comes down to this: We have heard a lot about the Endangered Species Act, which some of the proponents of this amendment say really is not involved here, essentially it does not come down to whether to allow salvageable timber sales, that is to allow timber sales to go in and salvage timber. That is not this debate. That is not this issue. Of course, the Forest Service can go in and ask timber companies to put up bids for salvage timber. That is not this issue.

This amendment really is whether to allow salvage sales on areas that are prohibited by law and prohibited by court injunction. That is owl habitat. There is a lot of salvage timber in this country—in Oregon, Washington, and California—that is not covered by Judge Dwyer's injunction as Forest Service lands. So this amendment is not whether to allow or not allow salvage timber sales.

This Senator, along with the other Senator from Montana, last year, on an appropriations bill—I might say to the Senator from Oregon—directed the Forest Service to go in and salvage, to offer sale on salvage timber in Montana so long as it was consistent with all environmental statutes. Of course, that was in the law. I must say not much timber was taken out because the Forest Service did not, frankly, do what I thought it should do. Nevertheless, it was an effort to take timber consistent with our environmental laws.

So I say to Senators, Madam President, if they want salvage timber to be harvested, that is fine. This amendment allows that, except this amendment wants to go further and asks the Forest Service to go in and take salvage timber in areas that are off limits by court injunction and by environmental statutes, and that is why I oppose this amendment.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. ADAMS addressed the Chair.

The PRESIDING OFFICER. The senior Senator from the State of Washington has 2 minutes.

Mr. ADAMS. Madam President, I will summarize for our side, in opposition to this amendment. It is my understanding Senator GORTON wishes to close. At the end of that, I am going to make a motion to table. I discussed this with the chairman of the full committee. On that motion to table, I ask for the yeas and nays.

Mr. BYRD. Madam President, I ask unanimous consent that it be in order to order the yeas and nays at this time.

The PRESIDING OFFICER. Without objection, it is so ordered.

Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator is recognized for 2 minutes.

Mr. ADAMS. Madam President, I will be very brief because I think the debate has been very direct. I am simply going to summarize.

The language in the Interior appropriations bill, as voted out of committee, already allows salvage, and it is consistent with current law. It says: Timber salvage activity in spotted owl habitat is to be done in full compliance with existing environmental and forest management laws. Under those laws in the western part of the State, the 1991 storm left 703 billion board feet of blown-down timber. Of that, 517 billion board feet have already been sold.

So this program is moving ahead. This is not a salvage amendment. It has been well stated by the Senator from Montana, by the Senator from Colorado, and others, that this is sort of a Trojan horse. Salvage is going ahead. They are going with a plan.

This amendment is unnecessary, but even more so, Madam President, it is dangerous. It would override the present law and the court orders. It would override the National Environmental Policy Act. It would override the work of the existing authorizing committees who are proceeding.

We need change in our public forest management policies, but his amendment will simply promote and continue outdated practices. The amendment is another greedy detour and we need to keep focused on developing a long-term forest health plan. Salvage is going on under these plans. Salvage should take place but only with proper planning, not by overriding laws like the Gorton amendment would do.

So, Madam President, I hope that my colleagues have listened to this debate and they will vote with the motion to table which I will make as soon as Senator GORTON has completed his remarks.

It is absolutely essential at this point that we understand this is a complicated issue. This should not be on an appropriations bill, but it is there, so we are going to move to table it. I hope my colleagues will vote with the motion to table the Gorton amendment.

Madam President, I am prepared to yield back the remainder of my time if the Senator from Oregon will, so the Senator from Washington can summarize and we do not have to answer any further argument.

Mr. PACKWOOD addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. PACKWOOD. I will yield back the remainder of my time.

Mr. ADAMS. I yield back the remainder of my time.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The junior Senator from the State of Washington.

Mr. GORTON. Madam President, it is hardly a surprise that during the course of the declining days of a Presidential election year, a significant number of Democrats would trash the President and the Secretary of Agriculture and the Forest Service, but it astounds the conscience that in order to punish their political opponents those same Senators would sentence working people and small communities to despair, devastation, and depression. It is precisely that sentence which the Democrats propose for very real people in the name of an abstraction.

Madam President, laboring people all across the United States desperately request the passage of this amendment. Organized labor has done so in a formal and written fashion in letters that have already been made a part of this

RECORD. They know which side is speaking for jobs and for working people.

Unorganized employees across timber country from one end of this Nation to another are asking for this amendment, both for its reality and for the symbol of hope that it provides.

Small independent mills are desperate for this amendment. This amendment makes no difference to the large companies that have huge landholdings on their own, unaffected by these rules.

The reasons that have led to this amendment, on the other hand, have already bankrupted dozens of small and independent mills and placed tens of thousands of people on the unemployment rolls in timber country.

But we deal with abstractions. We have heard chairman after chairman say "give the authorizing committees a chance. Let us work this out. This is a violation of this statute, that statute or another statute."

These are bloodless terms. They ignore the plight of real people. To speak about giving authorizing committees, which have done nothing, which have not produced a sentence, a phrase, a comma on this subject in more than 3 years, a chance is to make the old phrase that the chances of success are somewhere between slim and none an exaggeration. This is an exaggeration of the possibilities that there will be any such relief this year or, for that matter, I suspect next year.

Madam President, is this amendment about the spotted owl? No, Madam President, it is not. It specifically states that none of this logging will be done if it adversely affects the spotted owl. Is this amendment about old growth? No, Madam President, it is not. This amendment is about dead and downed—wind-blown-down timber rotting on the floors of our forests. It will not authorize the harvest of a single living old growth tree at any place throughout the amendment itself.

Is this amendment, as the majority leader said, about the Endangered Species Act? No, it is not about the Endangered Species Act. The two statutes mentioned as being overridden for the narrow purposes of this amendment specifically do not include the Endangered Species Act, for the very reason that the legal injunction under which we operate at the present time is not based on the Endangered Species Act at all.

Incidentally, the Endangered Species Act itself, which seems to be holy writ, has been "amended," as defined by the Democrats, at least a dozen times in this appropriations bill. At least a dozen times the bill states that "notwithstanding any other provision of law. * * *" So, if this were such an exemption, which it is not, it would not be something new to this act.

No, the Democratic opposition to this amendment stems from the psychology that forests appropriately are only valid when they are absolutely untouched by the hands of human beings. The Democrats imply that if trees fall to fire, that is fine; we will let it burn. If trees fall to wind storm, that is fine. If trees are victims of insects, that is fine. The only thing that the Democrats cannot allow is the productive use of our forests to create jobs and housing for the people of the United States. That is literally all.

Democrats evidently love employment as long as that employment does not use any natural resources and does not produce any waste. Under those circumstances, Madam President, we will have few people employed in the United States by anyone other than the Government itself.

As we debate this issue, 200,000 acres of timber are on fire in the State of Idaho. This is a full one quarter of the size of the State of Rhode Island. Fires are raging in Montana. Fires in eastern Oregon have driven 150 families from their homes.

This is what this amendment is about: it is about the use of salvage to, among other things, prevent and control fire.

Madam President, when we vote on this motion to table in a few moments, I want to make clear that a vote to table is a vote for fire, one of mankind's greatest scourges over the years. This amendment is designed, among other things, for the productive use of what is otherwise nothing but dry tinder for forest fires, forest fires that are raging as we debate this amendment.

This debate is Orwellian. We have now slashed by more than 90 percent the harvest of timber from productive lands on the forests of the Pacific Northwest, and the Democrats tell us that number has got to go to zero. They tell us we must work on these mythical authorizing bills, which never appear before us. And in the meantime, people can be driven from their homes; they can lose them to mortgages; they can lose their jobs; they can lose their communities; they can be forced into alcoholism and child abuse; but we have to wait for the authorizing committees. We can do nothing, not even for a year, to provide them with any kind of help or any kind of support.

Do not blame the courts, Madam President. The laws that the courts have used to terminate an industry are passed by this body, and this body can make exceptions to those laws. One small exception to provide some hope, one small exception to provide a few jobs, one small exception to prevent forest fires is before you right now. That is the issue on this next vote.

Mr. SEYMOUR. Mr. President, as California enters its seventh consecutive year of drought, the State is facing a forest health crisis. Dead and dying trees have created the ideal environment for wildfires. Something must be done if we are to avoid a fire of catastrophic proportions.

Already we are seeing reports of massive fires burning throughout the West; 200,000 acres in California, Idaho, Oregon, Washington, and Nevada have burned. It is only going to get worse.

Currently, the U.S. Forest Service is trying to increase salvage sales in California. These sales are intended to dramatically reduce the amount of fuel remaining in California's forests, thereby reducing the chance and severity of fires. These salvage efforts have a second but equally important benefit, they provide jobs to a forest industry that has been devastated by judicial injunctions on timbering.

Unfortunately, the Forest Service Salvage program is not working. In my State of California alone, there is over 1 billion board feet of dead and dying timber. The Forest Services does not even plan on harvesting half that amount. And frankly, from past experience, I would be surprised if a quarter of available and identified salvage in the state of California is harvested before it burns or rots.

There are many problems with the Forest Service Salvage Program, and I believe that the Forest Service can do much more to expedite salvage operations. I have been working with the Department of Agriculture to implement such changes.

That being said, changes in the law are also necessary. Currently, the Forest Service is unable to implement a rational salvage plan for spotted owl forests.

The Gorton amendment attempts to give the Forest Service the authority it needs to implement an expedited salvage plan. Senators will likely hear from many environment organizations urging them to vote against the Gorton amendment and prevent salvage operations.

The logic of these groups, though, is flawed. The Sierra Club Legal Defense Fund states in a flier they are circulating in opposition to the Gorton amendment that expedited salvage operations will impact areas that are already severely impacted by drought or disease. Well, I hate to break it to the Sierra Club, but salvage is the cutting of dead and diseased trees. If these trees are left standing the very same insects that infest them will spread to healthy trees. The Sierra Club goes on to say that the immediate consequences of the passage of the Gorton amendment will be "an increase in fire caused by logging." Again, I have to wonder if these people have ever been in a forest. First of all, dead trees, not logging, increases the chance of fire. Second, salvage operations reduce the threat of fire.

Some people still believe that forests are static ecosystems. If we simply leave them alone, they will remain forever as they are today. Unfortunately,

forests just do not work that way. Forests are dynamic, not static, and without management, they die when there are pest infestations and they burn when there is a drought.

Mr. President, California is in a drought. Let's try not to let it burn. I urge my colleagues to vote for the Gorton amendment.

Mr. ADAMS addressed the Chair.

The PRESIDING OFFICER. The senior Senator from the State of Washington.

Mr. ADAMS. I move to table the Gorton amendment.

Mr. BYRD. Madam President, will the Senator withhold that for 1 minute?

Mr. ADAMS. I withhold.

Mr. BYRD. Madam President, I hope that floor staffs on both sides of the aisle will alert Senators that following this vote, I want to try to ascertain what amendments remain to be called up, and Senator STEVENS and I will address the Senate with respect to certain precedents and Senate rules. I hope that Senators would stay around and hear what is said.

I thank the Senator for yielding.

Mr. ADAMS. Madam President, I move to table.

The PRESIDING OFFICER. The question is on agreeing to the motion to table amendment No. 2904. The yeas and nays have been ordered. The clerk will now call the roll.

The bill clerk called the roll.

Mr. FORD. I announce that the Senator from North Dakota [Mr. BURDICK], the Senator from Tennessee [Mr. GORE], and the Senator from Iowa [Mr. HARKIN], are necessarily absent.

Mr. SIMPSON. I announce that the Senator from Utah [Mr. HATCH] is absent due to a death in the family.

I further announce that the Senator from North Carolina [Mr. HELMS] is absent due to illness.

I further announce that, if present and voting, the Senator from Utah [Mr. HATCH] and the Senator from North Carolina [Mr. HELMS] would vote "nay."

The PRESIDING OFFICER (Mr. LAUTENBERG). Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 60, nays 35, as follows:

[Rollcall Vote No. 176 Leg.]

YEAS—60

Adams	Cranston	Kasten
Akaka	Daschle	Kennedy
Baucus	DeConcini	Kerrey
Bentsen	Dixon	Kerry
Biden	Dodd	Kohl
Bingaman	Durenberger	Lautenberg
Boren	Ford	Leahy
Bradley	Fowler	Levin
Breaux	Glenn	Lieberman
Bryan	Graham	Metzenbaum
Bumpers	Grassley	Mikulski
Byrd	Hollings	Mitchell
Chafee	Inouye	Moynihan
Cohen	Jeffords	Nunn
Conrad	Johnston	Pell
Pryor	Roth	Smith
Reid	Sanford	Specter
Riegle	Sarbanes	Wellstone
Robb	Sasser	Wirth
Rockefeller	Simon	Wofford

NAYS—35

Bond	Gorton	Packwood
Brown	Gramm	Pressler
Burns	Hatfield	Rudman
Coats	Heflin	Seymour
Cochran	Kassebaum	Shelby
Craig	Lott	Simpson
D'Amato	Lugar	Stevens
Danforth	Mack	Symms
Dole	McCain	Thurmond
Domenici	McConnell	Wallop
Exon	Murkowski	Warner
Garn	Nickles	

NOT VOTING—5

Burdick	Harkin	Helms
Gore	Hatch	

So the motion to table the amendment (No. 2904) was agreed to.

Mr. ADAMS. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, may we have order in the Senate.

The PRESIDING OFFICER. The Senator is correct. We will have order, please. Order in the Senate. Senators please clear the aisles.

All conversations on the floor should cease.

The Senator from West Virginia is recognized.

Mr. SARBANES. Mr. President, the Senate is still not in order.

The PRESIDING OFFICER. The Senator is correct.

Please discontinue the conversations or take them into the cloakroom.

Mr. BYRD. Mr. President, I have two matters I wish to discuss while we have some Senators here.

The second matter concerns the remaining amendments that are to be called up. I would like to know what Senators are serious about calling up those amendments.

But the first matter I think is of sufficient concern that it should have the attention of all Senators.

Senator STEVENS and I wish to address our attention to it.

I have, first of all, a prepared statement for the purpose of being concise and brief, which I will read. And then if Senators wish to discuss if further, I will be prepared to do that.

ORDER OF PROCEDURE

UNANIMOUS CONSENT AGREEMENT

Mr. BYRD. Mr. President, I rise to address the procedural situation concerning legislative amendments proposed to general appropriations bills.

On July 27 of this year, the Chair sustained a point of order against an amendment offered to S. 3026—a Senate bill—making appropriations for the Departments of State, Justice, Commerce and related agencies. An amendment was offered to repeal the provisions of the District of Columbia Code which imposed strict liability on the manufacturers of assault weapons. A point of order was made against the amendment on the grounds that it was legislation on a general appropriations bill, and the Chair sustained the point of order.

However, the sponsor of the amendment appealed the ruling of the Chair, and the Senate voted not to sustain the ruling of the Chair. Any vote by the Senator on an appeal from a Chair's ruling on a point of order establishes a precedent to guide future Presiding Officers. This precedent could have serious consequences for the rules of the Senate and the precedents which interpret those rules and which guide Presiding Officers in ruling on points of order.

The amendment at issue was clearly legislation—no doubt about it—because it repealed existing law, and in no way affected appropriations. But the vote of the Senate on the appeal represents the Senate's decision that such language, which was legislation, was not legislation. No other issue was articulated in the debate on the appeal. All debate concerned the substance of the amendment.

I was not, at the time, fully aware of the implications of the precedent being set. I did, however, vote to sustain the Chair.

There is nothing in that debate that suggests any qualifications on the effect of the vote to overturn the Chair. The Senate voted that an amendment that was clearly legislation does not violate rule XVI's prohibitions against adding legislative amendments to general appropriations bills. Consequently, future occupants of the Chair would be constrained not to sustain any point of order against a legislative amendment to a general appropriations bill. A valuable protection of the rights of individual Senators would be lost, and a significant Senate rule eroded.

Additionally, may I say, the authorities and powers of authorizing committees in this body would likewise be impaired.

It might be hoped that future Presiding Officers would simply ignore this precedent, and continue to rule based on the preponderance of earlier precedents. However, a vote by the Senate on an appeal established a precedent of the highest probative value and would guide future Presiding Officers unless reversed or qualified. If future Presiding Officers could ignore this precedent, one could then fairly ask which precedents would Presiding Officers follow, and which they ignore?

Let me suggest that the facts of this particular case were unusual in that

the Senate was considering a Senate-originated appropriations bill, not a House-originated appropriations bill. Since the House of Representatives has historically claimed the right to originate appropriations bills, the Senate rarely considers such a bill which originated in the Senate. A century of Senate precedents has established the right of Senators to propose legislative amendments to general appropriations bills if the House of Representatives has opened the door by legislating on a related issue first. If this had been a House appropriation bill and if the House had opened the door, then a legislative amendment would be in order in the Senate if such amendment were germane to the House legislative language.

Under the Senate's precedents, if a point of order is made against an amendment to a general appropriations bill on the grounds that it is legislation, a Senator—if he does so before the Chair rules—can raise the defense of germaneness. A Senator must first show that there was some language passed by the House that was arguably legislative to which the Senate amendment could possibly be germane. However, under rule XVI, all questions of germaneness involving general appropriations bills are decided by a vote of the Senate. Such votes have no precedential value. Consequently, in a great number of instances where the issue of legislation on appropriations is raised—and in most instances it is never raised—but when such points of order are raised, then a Senator has a right to raise the question of germaneness and the Chair is required to put that question before the Senate.

So, in the great number of instances when legislation is offered in the Senate to a House appropriations bill, the issue is deflected to become a vote of the Senate as to whether the amendment is germane to House-originated legislation. Such vote is generally understood to be a vote on the merits of the amendment, the judgment of the Chair is not called into question, and no procedural precedent is established.

But no such opportunity for a vote of the Senate on germaneness existed in the case under discussion. Had the Senate been considering a House-originated appropriations bill, it is very likely that the issue would have been resolved without creating this unfortunate precedent.

Therefore, Mr. President, I ask unanimous consent that notwithstanding the vote of the Senate of July 27, 1992, future Presiding Officers not be bound by that precedent, and that they be free to rule on the question of legislation on appropriations based on the vast preponderance of the precedents established prior to that date.

Senator may reserve the right to object if they wish to comment at this point.

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The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. Reserving the right to object, and I shall not object, the Senator from West Virginia and I have had conversations about this, and I have conferred with the two Parliamentarians because of my feeling as a member of the Rules Committee that the impact of the purported—the record advice that would be given by the Parliamentarian to any Presiding Office was as the Senator from West Virginia stated: That the Senate's actions on the Smith amendment, which repealed a provision of District of Columbia law, not a provision of Federal law—and as the Senator from West Virginia indicated, it was a Senate-originated appropriations bill and therefore not subject to the concept of germaneness, a very unique circumstance—that the Parliamentarian would advise the Presiding officer as the Senator from West Virginia has indicated, that such action in effect would have vitiated the current provision of rule XVI that permits a point of order to be raised against legislation on an appropriations bill.

I think the action taken by the distinguished President pro tempore is entirely in order. As a member of the Rules Committee, I urge the Senate to see to it that this is adopted. And I hope that it is sufficient to satisfy the feelings of the Parliamentarians concerning the action that the Senate took on the Smith amendment.

I do not know if my friend from West Virginia would permit it at this time, but I would be constrained to ask the Parliamentarian if the statement and unanimous consent requested by the Senator from West Virginia would, indeed, have the impact that we all seek? And that is to assure that the provisions of rule XVI remain intact and that the Smith amendment not be considered a precedent for the purpose of in any way altering the effect of rule XVI concerning points of order on legislation on an appropriations bill. Would the Senator permit me to make that request at this time?

Mr. BYRD. I yield for the purpose of the Senator making a parliamentary inquiry to the Chair.

Mr. STEVENS. I make that parliamentary inquiry to the Chair: Is the Parliamentarian prepared to accept such a unanimous-consent request as in fact restoring the total vitality of rule XVI, according to the precedents of the Senate prior to the Senate's action on the Smith amendment?

The PRESIDING OFFICER. That would be the effect of granting the request.

Mr. STEVENS. I do not object, and I thank the Senator from West Virginia.

Mr. FORD. Mr. President, I reserve the right to object but I will not object.

The PRESIDING OFFICER. The Senator from Kentucky is recognized.

Mr. FORD. Let me join with my good friend and colleague the Senator from Alaska in support of the President pro tempore's motion. We do not look at the institution anymore. We look at the emotion behind the amendment and whether it will be a good or bad 30-second political ad. Somehow we are going to have to come back to what this institution really means and the procedures that are here.

I think it is unfortunate that we lay all of this burden for all practical purposes on the shoulders of the President pro tempore. No one else reminds us about the rules. No one else reminds us of what should be done. No one comes forth with the ideas to use the unanimous-consent agreement to say that this will not be a precedent.

So I think it is now time for us to take a real, hard, cold, look—if I can use that term—at how we proceed in the Senate and begin to say we need to move legislation through here; we need to have limited debate; and we need to get on with the people's business. Then we can go back to our own States and see our constituents and not worry about whether we are going to be in Saturday or not, or whether we are going to be in until 9, or 10 o'clock, or midnight, or 2 in the morning. We would have a procedure here.

It is about time 99 of us joined the President pro tempore and gave our support to the majority leader and the minority leader so we can move legislation through here. I compliment my friend from West Virginia for his effort in protecting the rules of this institution, and I do not object.

Mr. BYRD. I thank the Senator.

The PRESIDING OFFICER. The Senator from Washington is recognized to raise his concern.

Mr. ADAMS. Reserving the right to object, and I shall not object. I want to echo the remarks of the Senator from Kentucky and also state this was not on the D.C. appropriations bill that this occurred. Because I agree with the Senator completely, this precedent should be overturned and the rules restored so we do not have legislation on appropriations bills. I compliment the President pro tempore for bringing this up. I just wanted to simply state it was not a D.C. appropriations bill on which this occurred. I thank the Senator very much.

Mr. BYRD. But even if it had been, such an amendment had no business being offered with such a bill—to any appropriations bill.

Mr. ADAMS. I simply mentioned that because the Senator is absolutely correct. Sometimes we get legislation from the other body and the question of germaneness comes up. We have been through that argument. We understand that process. That was the reason I mentioned it, is that there was no legislation possible that this could have attached to and germaneness

could not have been brought up. The Senator is helping us greatly. We hope this unanimous consent will be granted.

Mr. BYRD. I thank the Senator.

Mr. STEVENS. Reserving the right to object, I do state for the record that I do not agree with the statement of the Senator from Washington. This has no impact on the action taken on the Smith amendment. It just says the Smith amendment shall not be deemed to have changed the precedents of the Senate with regard to legislation on an appropriations bill.

The PRESIDING OFFICER. The Senator from Arkansas in response to the unanimous-consent-request.

Mr. PRYOR. Mr. President, reserving the right to object, I will not object, I shall not object.

Mr. President, once again I would like to state to the Chair and to our colleagues, the critical nature of what the distinguished President pro tempore is dealing with at this time. I remember casting that vote, I believe it was a week ago Monday, if I am not mistaken, on the floor. I remember that I had some reservations about that vote but I did not truly recognize, nor was I sensitive enough to the magnitude of what we were doing.

Mr. President, I would like to rise to thank the distinguished Senator from West Virginia. Once again he has brought this great institution sort of back into the mode of reality and he has performed a real service for us and for the institution. I think most of us—I cannot speak for all of our colleagues in casting that vote—this was one of those classic votes where we did not possibly realize the unintended consequences of our act. Mr. President, I thank the distinguished Senator for performing this service for the Senator and for the Senate.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Reserving the right to object and not only shall I not, quite the opposite. I just want to add my voice of thanks to the Senator from West Virginia for the TLC, the tender, loving care which he gives to this institution and its rules. I notice how much time he has given to this particular issue since the vote on the Smith amendment. It did create some very serious ramifications for our authorizing committees as well as for the procedures on the floor. And I just simply want to add my voice of thanks for being there, to protect this institution and its rules.

Mr. BYRD. I thank the distinguished Senator.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Before the Chair puts the request, Mr. President, no Senator, I am sure, realized the implications of his vote to overturn the Chair in that instance. I want to make that perfectly clear, as far as my opinion is concerned.

I believe most Senators would have voted to sustain the Chair, had they realized the full implications of that vote.

Second, let me say, the vote really had the effect of changing that provision in rule XVI, at paragraph 4:

> On a point of order made by any Senator, no amendment offered by any other Senator which proposes general legislation shall be received to any general appropriation bill, nor shall any amendment not germane or relevant to the subject matter contained in the bill be received to any general appropriations bill.

So the effect of that vote was to modify or amend, even to negate, a provision in the Senate rule. I am sure most Senators never want to do that.

Third, let me emphasize again, that the effect of this unanimous-consent request—if agreed to—will have no impact whatsoever on the amendment that was offered by the Senator from New Hampshire [Mr. SMITH]. I was opposed to his amendment, but that is not why I am here today. Even if I had been supportive of the amendment, I would still have made this statement and this request today.

I was not, I must say—by way of obiter dictum—impressed by those who seem to imply that the Congress has no right to overturn a law of the District of Columbia. I do not agree with that. But I did agree that the Chair's ruling should be sustained.

On the matter of the rights of the Congress, if we want to put it that way, the Constitution provides that the "Congress shall have power to exercise exclusive legislation in all Cases whatsoever over such District * * * as may * * * become the Seat," not a seat, "the Seat of the Government of the United States."

So Congress has the power. That argument was not impressive, as far as I am concerned, but I did favor the law of the District of Columbia. But this request today does not go to the merits of the amendment offered on that occasion by Senator SMITH.

But just so we may understand that the Senate was repealing a law and that his amendment was legislation, no doubt about it, I will read the amendment which appears on S10327 of the CONGRESSIONAL RECORD of July 27.

> The Senator from New Hampshire [Mr. SMITH] proposes an amendment numbered 2752.
>
> At the appropriate place, add the following:
>
> "The Assault Weapon Manufacturing Strict Liability Act of 1990 (D.C. Act 8-289, signed by the Mayor of the District of Columbia on December 17, 1990) is hereby repealed, and any provisions of law amended or repealed by such Act are restored or revived as if such Act had not been enacted."

So that was, indeed, legislation on an appropriations bill. Therefore, no Senator had the defense of asserting the defense of germaneness. There was nothing in that bill to which the Smith amendment could have been germane, because it was a Senate appropriations bill, S. 3026, not a House appropriations bill.

Mr. STEVENS. Will the Senator yield again for one comment?

Mr. BYRD. Yes.

Mr. STEVENS. Mr. President, as the Senator knows, I was slightly vociferous about the amendment offered by my friend from Georgia, Senator FOWLER. I have had discussions concerning the right to raise the point of order of legislation on an appropriations bill in connection with that amendment. It was during those conversations that I think the Senator from West Virginia advised me and I realized that that would put subjective considerations into reversing the advice that the Chair was going to receive from the Parliamentarian and in all probability we might have had a compounded problem had the point of order been raised and this Senator appealed the ruling of the Chair.

So I am delighted that the Senator from West Virginia, again, has taken upon himself as President pro tempore to find a way to achieve that goal without the subjective feelings of any Senator being involved. I think it is right and proper that we do restore the validity of rule XVI. And the Senator has done, as everyone has said, a great service to the Senate.

I voted, I have to tell the Senator, as he probably knows, I voted for the Smith amendment because I believe in the Smith amendment, and it is unfortunate that the advice was derived by the Parliamentarians. I do not argue with the Parliamentarians. They are the Parliamentarians, I am not. I was prepared to accept the advice of the Parliamentarians. I am delighted the Senator from West Virginia has done just that. I hope it will lay it to rest. I hope all of us will be forewarned in the next instance to find another way to deal with the subject without raising that type of a situation again.

Mr. BYRD. Mr. President, I will close with this statement. Seldom do I vote to overrule the Chair. I have done so upon occasion. I have even recommended that the Senate vote to overrule the Chair in some rare instances and may do so again at some point in time. But I believe that Senators ought to be very, very careful and first realize what they are doing when they vote to overturn the Chair. In this particular instance, as I say, the vote to overturn the Chair's ruling could be interpreted as amending, modifying, or even negating a provision in standing rule XVI.

That completes my statement.

Mr. METZENBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio is recognized.

Mr. METZENBAUM. Mr. President, reserving the right to object, I am concerned about this matter, notwithstanding the fact that I am in total agreement with the Senator from West Virginia. I agree that the ruling of the Chair was appealed and arrived at a conclusion that put legislation on an appropriations bill. It does not serve this Senate well.

The reason for my rising is that I am concerned that only about a half a dozen Members of the Senate are on the floor of the Senate at this time. I am concerned about the precedent that we would be setting in getting an agreement by unanimous consent to overrule a previously made decision of the Chair.

I wonder if my colleague from West Virginia, who is a stickler for rules of the Senate and an authority with respect to the rules of the Senate and a very fair individual—and I have worked with him over a period of years on many parliamentary issues—would not think it appropriate that before this matter is put to the body, that the Members of the Senate be alerted to the fact that this action is about to be taken?

I know that the Members could and should be on the floor, but it is my view that there could be another occasion when, without sufficient numbers of Members of this body on the floor, that the Senate might proceed to change some other rule of this body or some other ruling of this body.

I wonder whether or not the Chair might inquire of the Senator from West Virginia and respond directly as to whether he would not feel it appropriate that there be some notice given before this action is taken.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. I, in a manner, gave notice in that I announced before the rollcall vote that Senator STEVENS and I would be addressing a matter involving the precedents and rules of the Senate and urging the staff, floor staff on both sides, to notify Senators to stay around for that purpose, to listen so they could be perfectly aware.

The Senator, of course, has a right to object, if he wishes, in which case I will offer an amendment. I have a slot in the amendment list which deals with technical amendments, and I view this as a technical amendment. It is not a matter of substance. It does not affect this appropriations bill in any way. If the Senator wishes to have the Senate fully on notice and have a vote on it, that will be fine with me.

Mr. STEVENS. Will the Senator yield for just one moment, my friend from Ohio. I think this is really preventive medicine. The Chair has never to my knowledge advised—the Parliamentarian has never advised the Chair yet as to this potential that we are trying to correct.

Am I incorrect, Mr. President? Has the Parliamentarian yet advised the Chair of the effect of the Smith amendment on rule XVI and has that become a precedent yet?

The PRESIDING OFFICER. The issue has not arisen since that time.

Mr. STEVENS. What I am saying to my friend from Ohio is that the Senator from West Virginia, in his usual surgical way, is asking the Senate to unanimously agree that the action of the Smith amendment did not affect rule XVI, it is not changing the rule, and it is not reversing a precedent. No such precedent has been confirmed yet in the Senate. It would have been, had this Senator raised the point of order against the Fowler amendment that I was about ready to raise. But after conferring with my friend, who is the oracle of the rules, in my opinion, I did not do that, and the Senator agreed that we would together find a way to assure that the Senate did not lose the right under rule XVI that exists and will be perfected once again, prevented from being harmed by such a ruling if someone were to make a point of order of legislation on an appropriations bill where the rule of germaneness could not be raised.

It is a narrow situation, I am sure the Senator from Ohio realizes.

Mr. METZENBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. METZENBAUM. Mr. President, although the Chair has not ruled to that effect, the Senator from Ohio would represent to his colleagues that on a previous occasion, not in connection with this matter but several days ago, I inquired of the Parliamentarian on this very point, and the Parliamentarian advised me, as many of us get advice from him by going to the front, that the ruling was controlling at this point with respect to the matter of legislation on an appropriations bill.

I am not looking to create a problem for the Senator from West Virginia. As I said earlier, I agree with the Senator from West Virginia. What I am suggesting to the Senator from West Virginia, unless there is some reason not to do so, is that there be a hotline for a half-hour or 45 minutes that this matter was going to come before the body. Every Member can then be notified. And I do not think the Senator from West Virginia would be losing any position. The Senator from Ohio is totally supportive of his effort. But I just have the feeling that this itself creates somewhat of a precedent, so we will be changing the rules by unanimous consent, and I would feel much more comfortable if we at least alerted all Members of this body.

Mr. BYRD. Mr. President, I cannot let that statement stand. The Senator says this request will be changing the rules by unanimous consent. I would never do that. That is not my purpose. My purpose is, by unanimous consent, to negate a dangerous precedent which was set the other day which, in effect, changed that provision in Senate rule XVI prohibiting legislation on appropriations bills.

I will be perfectly happy to renew my request later. I doubt that we will have any more Senators on the floor than we have now. Or I can offer an amendment and let all Senators vote on it.

Mr. METZENBAUM. Would the Senator from West Virginia be comfortable in asking the staff to alert all Members of the body that this is going to be renewed 45 minutes from now?

Mr. REID addressed the Chair.

Mr. BYRD. Mr. President, I am happy to. I have no fear of the outcome of this.

Mr. METZENBAUM. Neither do I.

Mr. REID. Will the Senator from West Virginia yield?

Mr. BYRD. Yes.

Mr. REID. This has been very educational. We as Senators have a responsibility to watch what is going on on the Senate floor, and I do not think any time something like this comes up we have to notify people what is going on here. They should be watching and listening. I think that we should move about the business of the Senate and not alert the staff, or that the staff should be alerted. We are in business now. We have been for several weeks.

Mr. BYRD. I did give the Senate notice, as I have already indicated. Furthermore, Senators are watching their televisions. I daresay at this hour of the day anything that is said on the floor is heard and seen in practically every Senator's office, and they are very quick to object. It is like that advertisement I hear on the TV: "If you have a telephone, you have a lawyer."

Senators have telephones, and I am sure they would be getting in touch if they wanted to lodge an objection.

Besides that, we have a list of 20 amendments, and we have disposed of only two of them at this point. I wanted to get around to asking Senators if they are really serious about these amendments. If they are not, we would like to remove them from the list. I am sure the majority leader would like to have some idea whether or when we might finish work on this bill.

Mr. METZENBAUM. I support the Senator in both respects. I support the Senator in trying to clarify this rule and I support him in being able to move forward with this legislation. I only raise this question because it is of concern that, although it is not changing the rule, it does impact upon a previous decision made by this body and the impact is that it is a change of the rules.

I do not consider it a cause celebre, since I agree with the Senator from West Virginia. If he is not inclined to

hotline it and let the Members know what is going on, I would not stand in the way of going forward. But I do have my reservations.

Mr. BYRD. Mr. President, I ask unanimous consent that on an amendment which I am prepared to send to the desk, a vote occur on that amendment immediately following the next vote on any other amendment, so that the Senate will have an opportunity to show hands down exactly how they feel about this matter.

Mr. MITCHELL addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. BYRD. Mr. President, I have not yielded the floor yet, but I yield to my friend.

Mr. MITCHELL. Will the Senator yield?

Mr. BYRD. Yes; indeed.

Mr. MITCHELL. Mr. President, it is becoming very hard to move this legislation. I think what Senator BYRD is attempting to do is worthy of praise and support. I understand the concern of the Senator from Ohio. I will say to the Senator that, as he knows, I regularly propound unanimous-consent requests on the floor, and I can assure him when Senators object we hear within seconds—within seconds. Frequently when I am in the middle of a sentence, the phone rings and staff comes running out to say, "Senator so and so objects."

Now, may I suggest the following to accommodate the Senator and to permit us to proceed: Why do we not now proceed to another amendment. All Senators have been notified by virtue of this debate, and unless objection is heard from a Senator who insists upon it being done in the form of an amendment and thereby a vote by the hour of 6 p.m., we will proceed to have it done by consent as Senator BYRD has suggested.

Mr. METZENBAUM. Perfectly agreeable.

Mr. MITCHELL. Is that agreeable to Senator BYRD?

Mr. BYRD. Yes; it is.

Mr. MITCHELL. I thank my colleagues.

Could the Senator proceed with the next amendment?

Mr. BYRD. Yes; indeed.

Incidentally, I call attention to that debate which occurred in the Roman senate in 62 B.C., when the senators were discussing the punishment that should be meted out to the participants in the conspiracy of Catiline. Caesar rose to say: "All bad precedents originate from measures good in themselves."

So this, in the eyes of some, was a good measure in itself. But as we saw, by our not paying adequate attention to the implications of the procedural aspects, the Senate was about to set a very bad precedent.

I yield the floor.

Mr. MITCHELL. Mr. President, I ask unanimous consent that Senator BYRD's request be temporarily set aside, with the understanding that he will renew the request at approximately 6 p.m., unless objection is heard from a Senator who wishes it in the form of an amendment with a recorded vote.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, I thank the distinguished majority leader.

Mr. SMITH. Mr. President, because neither the Senator from West Virginia [Mr. BYRD] nor any other Senator had notified me in advance that my amendment to the State-Justice-Commerce appropriations bill would be debated this afternoon and that a unanimous-consent agreement would be entered with respect to that vote, this Senator is forced to comment on that unanimous-consent agreement after the fact.

First of all, Mr. President, no Senator is more concerned about the increasing problem of legislation on appropriations bills than this Senator. There is hardly an appropriations bill considered by this body which does not contain dozens of provisions which are legislative in nature. In the case of this year's State-Justice-Commerce appropriations bill, the legislative provisions contained in the Senate bill were effectively insulated from challenge by the fact that the Senate—arguably unconstitutionally—chose to report a Senate-originated appropriations bill, rather than marking up a House bill. According to the parliamentarian, this meant that the provisions of rule XVI prohibiting legislation on an appropriations bill did not apply to the Senate-initiated proposal.

When the Senate moved to strike all after the enacting clause of the House bill and to insert the provisions of the Senate bill, it would have been in order for any Senator to raise a point of order with respect to the many legislative provisions in the Senate bill. It would also have been in order for this Senator to offer his amendment on the D.C. gun bill and to raise the defense of germaneness, and this Senator has no doubt but that the Senate, in accordance with the Adams and Gramm precedents on the 1989 supplemental appropriations bill, would have found the amendment germane. Finally, this Senator could have raised a point of order that a Senate-initiated bill was unconstitutional.

Any of these courses of action would have had the effect of derailing the Senate schedule and requiring the State-Justice-Commerce bill to be considered twice—once in connection with the Senate bill and once when the House bill arrived.

Mr. President, this is not the first time that the Senate has overturned the Chair on the question of whether language constituted legislation on an appropriations bill. Early in the 1980's, my senior colleague, Senator RUDMAN, successfully appealed the ruling of the Chair that elaborate legal services language extending for several pages constituted legislation on an appropriations bill. This was not a vote on germaneness—it was a flat appeal to the ruling of the Chair, which the Senate overturned by roughly the same vote that it would have entered on the merits.

Mr. President, this Senator has no objection to the unanimous-consent request by the Senator from West Virginia. But I would only say that what's sauce for the goose is sauce for the gander.

First of all, let's not have any more Senate-initiated appropriations bills which insulate legislation on an appropriations bill reported by the Senate committee from any point of order, but eliminate any possibility of a legislative floor amendment, even if it is germane to a House provision in the House bill to which the Senate bill will eventually be attached.

Second, let us redouble our efforts to strip the committee-reported appropriations bills of the pages of legislative language which regularly grace them.

The maintenance of the Senate rules is a two-way street which requires the diligence of all Senators—with respect to instances in which the ruling of the Chair would benefit them, but also with respect to instances in which the ruling of the Chair would thwart their legislative interests.

(Later the following occurred:)

Mr. BYRD. Mr. President, in accordance with the order previously entered, I ask unanimous consent that, notwithstanding the vote of the Senate on July 27, 1992, future Presiding Officers not be bound by that precedent, and that they be free to rule on the question of legislation on appropriations based on the vast preponderance of the precedents established prior to that date.

The PRESIDING OFFICER. Is there objection to the request?

Without objection, it is so ordered.

Mr. BYRD. As I look now at the list of 20 amendments, 2 have been disposed of by the Senate today. I hope Mr. NICKLES will follow me on this list, because I am going to ask unanimous consent that it be accordingly narrowed.

I understand now that, based on the very excellent work of our respective staffs on both sides of the aisle, the amendments have been narrowed. Instead of 20 amendments, 2, of course—as I said about 3 times—have been disposed of by the Senate in almost 8 hours.

The following amendments, however: Mr. BOND, I understand his amendment is on the list, dealing with the subhumid agroforestry. I understand he will not call that up.

I understand that the amendment by Mr. STEVENS dealing with small mining exemption, that is in the bill; an amendment by Mr. REID dealing with mining, no patent on uncommon variety minerals.

Mr. REID. Mr. President, if the chairman will yield, we have been notified by the budget people that that would score against our bill.

Therefore, between now and conference, we will work on that to see if something else can be done to exclude the uncommon varieties from being patented.

So we will drop that from the list.

Mr. BYRD. An amendment by Mr. REID dealing with mining. It just says mining.

The Senator has three amendments.

Mr. REID. Yes. Mr. President, if the chairman will yield, there will be one amendment dealing with bonding that will be offered on behalf of Senator BUMPERS and I. That will take no debate.

I think all parties on both sides have agreed to it. If not, they will shortly.

Mr. BYRD. Very well. An amendment by Mr. SMITH dealing with freeze, which I understand will not be called up; an amendment by Mr. KASTEN dealing with battery research will not be called up; an amendment by Mr. LOTT dealing with battlefields will not be called up.

Mr. NICKLES. If the chairman will yield, Mr. President, I believe both Senator KASTEN's and Senator LOTT's amendments will be discussed with a colloquy.

Mr. BYRD. That is correct.

And an amendment by Mr. BINGAMAN, dealing with boots and saddles will not be called up.

Is what I have said the understanding of the distinguished Senator?

Mr. NICKLES. That is correct.

Mr. BYRD. I therefore ask unanimous consent, Mr. President, that those amendments be deleted from the list of eligible amendments that may still be called up on this bill.

Mr. STEVENS. Reserving the right to object, Mr. President, the Senator did not read the remaining amendments. That only pertains to the amendments that the Senator has mentioned?

Mr. BYRD. Yes; that is correct.

Before the Chair puts the question, let me read the remaining amendments concerning which I have no indication as to whether or not they will or will not be called up.

On the list still is an amendment by Mr. WALLOP dealing with net receipts; an amendment by Mr. WALLOP dealing with abandoned mineland reclamation fund; an amendment by Mr. STEVENS to authorize the transfer of a historic building in Alaska; an amendment by Mr. BOND dealing with Forest Service, which prohibits expenditures for computer purchase or maintenance pending Department of Agriculture field structure reorganization; an amendment by Senators WALLOP, BURNS, CRAIG, and BAUCUS to strike $148,000 in National Park Service funding for wolf reintroduction EIS, and to provide funds for a BLM project in Wyoming; an amendment by Mr. REID dealing with bonding requirements in mining; an amendment by Mr. JEFFORDS on the grazing fees; and I have an amendment by Mr. DOLE still on the list dealing with Hanover Station; an amendment by Mr. SEYMOUR, private relief, Yosemite; and Senator BYRD has a slot for technical amendments.

Mr. NICKLES. If the chairman will yield, Mr. President, I believe the Dole amendment will be handled by a colloquy. I believe that the Seymour amendment has been deleted, as well.

Mr. BYRD. Very well.

Mr. President, I ask unanimous consent that the list of eligible amendments therefore be narrowed accordingly.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. I thank all Senators. We have made some progress. We still have some amendments on the list, at least, which could be troublesome.

I hope that a Senator will immediately call up an amendment.

Mr. NICKLES. If the chairman will yield for 1 further second, I discussed Senator WALLOP's amendments. It may very well be that he will not offer those.

Senator STEVENS' amendment would transfer a historic building. I think Senator STEVENS is trying to work that out with Senator BUMPERS, and hopefully that can be handled without a vote.

Mr. President, I think we are really down to one last amendment that is going to require a vote, and that would be on Senator JEFFORDS' amendment dealing with grazing fees. I have requested interested parties on that issue to avoid an extended debate. We have debated grazing fees several times.

Hopefully, we will have a very short debate, and a motion to table, and that amendment can be dealt with and disposed of.

Mr. BYRD. Very well. I thank my friend, the distinguished Senator from Oklahoma [Mr. NICKLES] for his excellent work.

I yield the floor.

Mr. JEFFORDS addressed the Chair.

The PRESIDING OFFICER. The Senator from Vermont.

AMENDMENT NO. 2905

(Purpose: To require the Secretary of Agriculture and the Secretary of the Interior to establish a domestic livestock grazing fee for certain lands for the grazing season that commences on March 1, 1993)

Mr. JEFFORDS. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Vermont [Mr. JEFFORDS], for himself and Mr. METZENBAUM, proposes an amendment numbered 2905.

Mr. JEFFORDS. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place, insert the following new section:

SEC. . Section 6 of the Public Rangelands Improvement Act of 1978 (43 U.S.C. 1905 and 1751) is amended by adding at the end the following new subsections:

"(c)(1) Notwithstanding any other provision of law, the Secretary of Agriculture, with respect to national forest lands in the 16 contiguous western States (except National Grasslands) administered by the Forest Service where domestic livestock grazing is permitted under applicable law, and the Secretary of the Interior with respect to public domain lands administered by the Bureau of Land Management where domestic livestock grazing is permitted under applicable law, shall establish for the grazing season that commences on March 1, 1993, and ends on February 28, 1994, a domestic livestock grazing fee equal to $2.40 per animal unit month.

"(2) The grazing fee established in paragraph (1) shall apply to grazing permits on Federal lands managed by the Forest Service (with the exception of National Grasslands) or the Bureau of Land Management, except that:

"(A) If a grazing applicant or permittee presents certified evidence that the applicant or permittee owns or controls, whether through direct ownership or through leasing or management agreements a total of fewer than (i) 500 head of cattle or horses or (ii) 2,500 head of sheep or goats, or both, on grazing land under all types of ownership, including Federal State, local, and private, the fee shall be the greater of—

"(i) the fee determined by applying the formula described in subsection (a); or

"(ii) $1.92 per animal unit month.

"(B) All livestock owned or controlled by an applicant or permittee, whether in one or several States and whether grazed on Federal lands or not, shall be included in calculating the total number of livestock under paragraph (1).

"(C)(i) Subject to clause (ii), the Forest Service and the Bureau of Land Management shall determine by regulation the type of certified evidence applicants or permittees must provide to reflect aggregate ownership or control of domestic livestock for the purpose of determining the appropriate grazing fee.

"(ii) Proofs of livestock ownership under applicable State laws may include bills of sale, brand inspection records, State and local property tax assessments, incorporation papers, and lease agreements.

"(D) For purposes of this subsection, individual members of a grazing association shall be considered as individual applicants or permittees for the purpose of determining the appropriate fee level to be assessed.

"(E) Executive Order No. 12548, dated February 14, 1986, shall not apply to grazing fees established pursuant to this Act.

"(d) The grazing advisory boards established pursuant to an action of the Secretary, notice of which was published in the Federal Register on May 14, 1986 (51 Fed. Reg. 17874), are abolished. The advisory func-

tions exercised by the boards, shall, after the date of enactment of this subsection, be exercised only by the appropriate councils established pursuant to section 309 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1739).

"(e)(1) Funds appropriated pursuant to section 5 or any other provision of law relating to disposition of the Federal share of receipts from fees for grazing on public domain lands or National Forest lands in the 16 contiguous western States shall be used for—

"(A) restoration and enhancement of fish and wildlife habitat;

"(B) implementation and enforcement of applicable land management plans, allotment plans, and regulations regarding the use of the lands for domestic livestock grazing;

"(C) land and range improvements and conservation practices on public lands used for the purposes of grazing, including restoration and improved management of riparian areas; and

"(D) increased production of forage and browse for livestock and wildlife habitat needs.

"(2) The funds referred to in paragraph (1) shall be distributed as the Secretary concerned considers advisable after consultation and coordination with the advisory councils established pursuant to section 309 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 8 1739) and other interested parties, including local conservation districts in areas where applicable.".

Mr. JEFFORDS. Mr. President, we are again, Senator METZENBAUM and I, offering a grazing fee amendment. I will point out that since there is a grazing fee provision contained in the basic bill, that we have a defensive——

The PRESIDING OFFICER. If the Senator will suspend, the Senator is entitled to be heard.

The Senate will be in order.

Mr. JEFFORDS. Just to clear this up, in view of all of the discussion we have had on authorizing legislation on an appropriations bill, I point out that the basic bill here—my colleagues should realize this—has a grazing fee provision in it.

The grazing fee increase provision which is in the underlying bill, put in there by the House, is substantially higher than the one that Senator METZENBAUM and I are offering today.

Mr. President, before I discuss the specifics of my amendment, I would like to read a passage from a recent issue of Public Lands News:

The hand dealt opponents of (a grazing fee) increase is weaker this year, primarily because of the worsening national budget situation. In addition to no increase in grazing fees, Westerners in a House-Senate appropriations conference will (1) oppose higher fees for hardrock miners, (2) seek twice as much revenue for the payments-in-lieu of taxes program, (3) demand that states receive their full 50 percent share of state mineral revenues, and (4) call for a balanced budget.

I think that sums up the situation pretty well. Many of the Members who called for a balanced budget a few weeks ago will oppose my amendment.

Interestingly, their States' shares of allocable Federal expenditures exceed their share of the Nation's tax burden. My State of Vermont is not in such an enviable position. Nor are the other older, industrial Frost Belt States.

In a way, our Northeastern and Midwestern States are the ones "pulling the wagon" and the Western States are going along for the ride.

Between 1981 and 1988, if proportional shares of tax burden and expenditures were equal, the 11 principal grazing States would have received $79.8 billion less. The 18 States of the Northeast and Midwest would have received an additional $360.1 billion.

I bring this up because many Senators from the public lands States in the West are so keen to balance the budget and invoke that necessity when they argue against funding for cities and urban programs.

But the same logic doesn't seem to apply if we attempt to fine-tune some of these natural resource programs.

If we are going to begin to reduce the deficit, we have to get more revenue from the natural resources every American owns.

I had hoped that Congress would resolve the grazing fee issue this year. Apparently, we're going to put it off another year.

The Appropriations Committee report directs the Secretary—presumably of the Interior—"to report no later than March 1, 1993, on specific options for determining grazing fees that embody a fair price value."

The Forest Service and BLM just issued a report this past April that tells us all we need to know about constructing a better grazing fee formula. I prepared an amendment to update and improve the formula based on the report. I think it's a good amendment.

I will not offer it in deference to the committee. But Senator METZENBAUM and I are growing tired of the industry's dilatory tactics.

So we will offer a new amendment. It is very simple. The grazing fee next year—under our amendment—will be $2.40 per animal unit month [AUM] for ranchers who own, lease, or otherwise control over 500 head of cattle or 2,500 head of sheep.

That's an increase of 25 percent over the current fee, which is allowable under the current formula.

If ranchers can document that they own fewer than 500 head of cattle or 2,500 head of sheep, their grazing fee will be determined by the current formula or it will remain at $1.92 per AUM, whichever is higher.

In other words, when you vote on the Jeffords-Metzenbaum grazing fee amendment, for those of you who are concerned about the grazing subsidy problem and want to do something reasonable, you should realize that what you will be voting on is a 1-year provision increasing the grazing fee by 25 percent, to $2.40 per AUM.

This is about half—less than half—of the grazing fee increase contained in the underlying bill.

The reason I am doing this is to remind Senators that last year, we took up the grazing fee amendment.

That amendment was basically the same one which is contained in the House bill this year.

At that time, opponents of my amendment expressed concern for a number of reasons. One was that the authorizing committee had not held a hearing. They would compromise in conference. Therefore, the amendment failed.

In the conference committee, however, they deleted the House grazing provision and replaced it with a requirement I drafted for a study to be made. The Department of Agriculture and the Interior conducted the study and issued it in April of this year. The authorizing committee did hold a hearing last month, but committee members determined that they did not like the study—the results of the study; and, therefore, they said that it was flawed and now have requested that a new study be made.

Since that time, the Energy Committee has taken no action on any bill relevant to grazing fees. So I remind those Members who, last year, told me that they voted against me because they had assurances that the committee of jurisdiction and the Members would try to work out a reasonable proposition with respect to grazing fees, we are here again this year as we wind down the session, and still we do not have a bill out of the committee.

At first, as I mentioned earlier, I thought I would offer an amendment containing what appear to be recommendations of those who are knowledegable about public range land grazing; to take the present formula and to do two basic things to the formula. First, update the base value in the current formula through indexing.

And just to let you understand how ludicrous the present situation is with respect to grazing fees—that base value was established in 1966—the $1.23 per AUM. It has not been indexed or updated since that time. I think we all would enjoy having a freeze on our rent back to 1966 and pay in nominal dollars the amount of money that we paid in 1966. We do not have that.

Second, the General Accounting Office [GAO] and the agencies determined that the formula is mathematically flawed because the forage value, beef cattle prices, and prices paid indices did not interact in a ratio format; and, consequently, could not move the fee closer to market conditions. We reset the indices in a ratio format in accordance with the guidance of the experts, to take into consideration the changes necessary to make the formula produce a fee closer to the market value of the forage.

However, in view of the fact that there still is a great deal of sympathy for those in the West and yet, recogniz-

ing that we should not just leave this issue alone this year, and having again been left in a situation in which the committee refuses to take action to raise this fee in order to make it closer to the costs associated with the grazing program, I am here for two basic reasons:

First of all, I am from a State and an area of the country which has traditionally, and still does, put more money into the Federal Treasury than it gets back. There are programs in existence which are rather largely subsidized by the Treasury, for the benefits of relatively few individuals, as I said. I would like to make sure that we begin to understand that we have to pay for what we get.

Second, I'm concerned about equity among beef producers. The beef producers in the West who graze on public land represent only about 2 percent of the beef producers in this country. The fees that they pay are substantially lower than the fees that the others pay on private lands in comparable situations.

For those two reasons, I hope you will assist me this time in lighting a little fire under those who would try to keep the fixed rent based on 1966 and say, "OK, we will give you a year. In that year, we are going to raise the grazing fees 25 percent, but only on those beef producers which have more than 500 cows." That will raise the fee on about 15 percent of those ranchers using the Federal grazing land. We freeze the price for those who have fewer than 500 cows or 2,500 sheep. Since it appears the correct formula is very defective in its construction and will produce an even lower grazing fee next year. I predict $1.44 per AUM. We say that it will not go lower than the current fee. If the formula, however, should increase the fee; if I am wrong in my prediction, then it would go up, but it would still be based on the old formula.

Our amendment is a very modest amendment. Its main purpose is to resolve this issue so you do not have to hear from me or anyone else again, and we get the kind of equity that is necessary for the rest of the beef producers of this country; and, puts public lands ranchers in a position where they will pretty much pay for the benefits they derive from the grazing fee program. Again, only 15 percent of the beef producers that are involved in grazing on Federal lands have more than 500 head of cattle or 2,500 head of sheep. Thus, the number of those that will be paying higher fees is very small, but they currently receive a huge benefit at the taxpayers' expense.

So, again, I just want to say that this is just a short, 1-year increase, but no increase on the small producers, only the large. It will not bring the fee up anywhere near where the market value is on comparable private lands. And does not bring fees up to where they would be if the formula were improved by those that recognize that changes have to be made.

So I hope that you will assist me in putting a little fire under some of our public lands friends so we will see action between now and next year. Next year I hope to stand up here and praise those that have been telling us for so long that they will do something.

Mr. President, at the invitation of some of my colleagues from the far West, I went out this past year to Wyoming and visited with the ranchers and farmers. It was an exciting and educational time for me. I sympathize with all farmers. We have many farmers in Vermont, of course. I got to understand their problems better and the differences there are in Federal grazing and grazing on the plains or grazing back in our State.

So I am being very modest this year. I am showing my good faith to those who asked me to pursue this and, also, in hopes of bettering the relationships of the dairy farmers and the beef producers, who have had a very strained relationship in the past few years. And that is one of the reasons I am here. I hope that this body will work with me to get rid of this issue by next year. The only way we can do it is to make some movement this year toward a reasonable reconciliation of this problem.

Let me give you a little bit further information. According to the Congressional Budget Office [CBO], our amendment will generate an additional $3.1 million, with no loss, absolutely no loss, of AUM's grazed.

So any argument that somehow this amendment is going to put anybody out of business is absolutely absurd.

Next year, I will refresh your memory, the fee for the biggest permittees will rise to just $2.40 AUM. AUM—we always toss that around—basically means 900 pounds of feed. So if you want to figure out the per-pound cost at 42.40 for 900 pounds of feed you can see that is a very, very good bargain.

That is the fee level, incidentally, the $2.40 which we will get to under this amendment, a 25 percent increase for the big producers, that prevailed in 1980, 12 years ago.

I do not think anyone can honestly characterize this amendment as unfair.

The 500 largest BLM permittees control 76 million acres, 47 percent of BLM grazing land. The smallest 500 control 13,000 acres, or just one-hundredth of 1 percent of the BLM total.

How do we differentiate between ranchers? The ranchers simply present evidence—the burden is on them, that is true; you have to have a self-enforcing system here—to the Forest Service or the Bureau of Land Management of livestock ownership: bills of sale, property tax assessments, brand inspection records incorporation papers, lease agreement, etc. All of these are records ranchers currently keep.

I do not want to take too much more time, so I will just close with the following observations.

First, only 25,000 ranchers hold these permits. That is a small minority, even in the West. And do not think private land ranchers who have to compete in private forage markets do not resent the subsidy accruing to their neighbors.

Several months ago, last November, to be exact, a Montana livestock journal reported that a majority of the Montana private land ranchers favor a grazing fee increase. One half expressed support for awarding Federal grazing permits on a competitive bid basis.

Second, the fee under our amendment would increase to $2.40 next year for the largest permittees only, That is the level it was in 1980, 12 years ago.

Third, 4 of the Nation's 10 biggest cow-calf operations, according to the National Cattlemen's Association, and 11 of the top 25 hold Federal grazing permits. They have between 6,000 and 35,000 head of cattle. Is it really fair that they pay the same fee as a family rancher with 250 or the 500 head?

Finally, I would like to quote to you from a Billings Gazette editorial that appeared on June 28, 1992:

> Grazing fees have long been so low that they have been kind of an unspoken subsidy for ranchers. But with the Federal Government so badly in debt, increasing them to true market value is one of the painful steps which the Federal Government should take. We are all going to have to make some sacrifices like this to put our Federal Government back in the black.

So I would urge you to allow us to establish some equity between beef producers in this country and also to reduce a subsidy which still exists, based upon 1966 data, which obviously has little or no relationship to the present value of money and market conditions.

So I hope you would keep these points in mind when you recognize that what we are trying to do here is a very modest attempt to establish equity among beef producers and equity for the taxpayers.

Mr. President, I yield the floor.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia is recognized.

Mr. BYRD. Mr. President, I shall move to table this amendment at some point, hopefully soon. I want to move the bill along. The matter will be in conference. There is legislation in the House bill. But I will not do so before Senator METZENBAUM has an opportunity to speak, and Senator DOMENICI. Are there other Senators?

Senator REID, Senator BURNS.

Any others?

Does the Senator wish to speak any further.

Mr. JEFFORDS. I would like to reserve that right.

Mr. BYRD. Could we have some idea of the length of time so all Senators will be on notice?

Mr. METZENBAUM. Five or ten minutes.

Mr. BYRD. At the most, 10 minutes.

Mr. DOMENICI. No more than 5 minutes.

Mr. BURNS. No more than 5 minutes.

Mr. REID. Two minutes.

Mr. BYRD. Two minutes for Mr. REID.

Mr. JEFFORDS. Five minutes.

Mr. BYRD. Five minutes for Mr. JEFFORDS and Senator SIMPSON for 5 minutes.

Mr. CONRAD. Will the Senator yield?

Mr. BYRD. Yes.

Mr. CONRAD. I would like 3 minutes as well.

Mr. BYRD. All right, 3 minutes to the Senator from North Dakota.

Mr. NICKLES. Senator CRAIG wanted 5 minutes.

Mr. BYRD. Mr. CRAIG wanted 5 minutes.

Mr. President, I ask unanimous consent that, at the conclusion of that total time as explicitly stated here on the floor by the Senators who will receive certain portions thereof, I be recognized to make a motion to table.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. METZENBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. METZENBAUM. Mr. President, I rise today to join with my colleague from Vermont in connection with this amendment.

This is an amendment which deals with a subject that we debated at great length last fall—grazing fees.

It is a subject that the House has voted on, and the result was decisive—grazing fees are too low, they are unfair to the rest of the American people, and they should be raised.

Let me revisit some of the issues that we debated last year.

Ranchers out West benefit from a subsidy in which they are granted the exclusive right to graze their livestock on Federal lands—at far below market rates. Grazing fees are so low they do not even cover the cost of maintaining the range in decent condition.

Currently, ranchers pay permit fees that total about $1.92 per animal each month. The fee is set by a formula established by a 1986 executive order—based on an appraisal of the forage value of the land that was conducted 25 years ago—in 1966.

The net effect is that ranchers are paying less than a quarter of what they should be paying. And that is not fair to the rest of the American people.

Of course, this is nothing new.

In 1983, although the Federal grazing fee was $1.39, the USDA estimated the fair market value was between $4.68 and $8.55, quite a distance from the $1.39 Federal grazing fee. This figure came about in an appraisal report estimating fair market rental value of grazing on public lands by the USDA. In fact, in 1980, the rate charged was $2.40.

Last year [GAO] reported that "relatively low fees are an inherent result of the existing formula's design. * * * The Federal grazing fee is 15 percent lower now than it was 10 years ago. This contrasts with a 17-percent increase in private grazing land lease rates over the same period. This is occurring even though public and private land ranchers face essentially the same market conditions"—(Current formula keeps grazing fees low, GAO/RCED–91–185BR).

In 1991, a rancher with a Federal permit could turn out a 500-head herd for 4 months for $3,940. But ranchers without such a permit are paying a market rate of $9.22 per AUM, or $18,440, to lease private land, according to the Department of Agriculture.

That is $3,940 for one; $18,440 for the other—the private rate.

The ranchers would have us believe that if we raise the grazing fees they will not be able to invest in range improvements, and practice good stewardship over the land.

But the Congressional Budget Office says that between 1979 and 1983, ranchers spent, on average, only 16 cents per animal each month on improvements—a lot of improvements that is.

Then ranchers have the nerve to say the Federal rangeland is not really worth $6 to $11 per animal per month because it is not as well kept as private lands.

Yet here we are collecting less than market value from wealthy ranchers who are using, and often abusing, lands owned by all Americans. The Government borrows money to maintain the range for a few wealthy ranchers.

Let me list a few of these wealthy permit holders who the taxpayers of this Nation subsidize. Oil companies are big in this area; oil companies like Getty Oil, Union Oil, and Texaco; also John Hancock Mutual Life Insurance Co., Pacific Power, and Utah Power & Light, Zenchiku Land and Livestock of Japan—a Japanese-based meat company that leases 41,000 acreas of federally subsidized ranchlands in Montana, David Packard of Hewlett-Packard, the San Felipe Ranch, McKay, ID.

It is absurd for the American people to be subsidizing these insurance companies, these oil companies, these wealthy investors, Japanese-owned companies. That is absolutely preposterous.

Mr. President, many of my western colleagues have spoken about the need to balance the budget and we listened.

Our colleague from Wyoming lamented just 2 months ago that we spend $977 billion in entitlement programs and that we don't perform a means test on over three-fourths of that spending. And when they spoke, we listened.

We heard from our western colleagues that raising the grazing fees will hurt the family rancher. And we listened again.

And, so, Mr. President, the amendment we offer today is not the same amendment we offered last year. It does not raise grazing fees across the board. It uses a means test.

It says that the large rancher will pay 25 percent more than what he paid last year. That is certainly not a hardship.

It says that if you have 500 head of cattle or fewer, or 2,500 sheep or goats or fewer, you will pay the current rate or the rate prescribed by the current formula.

I have no problem with giving the little guy a break, but when Fortune 500 companies are paying far below market rate for grazing their cattle on public lands, then it's time for Congress to take a stand against this giveaway to those who can afford it.

Frankly, I wanted to raise the rate for the large ranchers even more than this amendment does.

It will raise the rates to the 1980 level, $2.40; but we decided not to go that far—just to do it a very modest amount.

Mr. President, I think we all know what a vote against this amendment means.

It means that a wealthy few should still be entitled to these tax subsidies. I do not believe that should be. The Senator from Vermont does not believe that should be. I hope our colleagues do not believe that should be.

Mr. President, I urge my colleagues who spoke out in defense of the family rancher, my colleagues who have spoken out for a balanced budget, and my colleagues who know what is fair, to join me in this amendment to just say no to giveaways for these wealthy ranchers. Let us be fair to all the taxpayers of this country.

Mr. President, let us save some money. I urge my colleagues to support the amendment.

The PRESIDING OFFICER. The Senator from West Virginia is recognized.

Mr. BYRD. How much time remains under the order?

The PRESIDING OFFICER. Thirty minutes.

Mr. BYRD. Thirty minutes. I am advised that Mr. BAUCUS wants 5 minutes. I ask unanimous consent that he be added to the list for 5 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Then am I correct, Mr. President, that I should be present on the floor prepared to make my motion to table at the hour of 10 minutes of 7 p.m.?

The PRESIDING OFFICER. The Senator is correct; 10 minutes of 7.

Mr. BYRD. I thank the Chair.

The PRESIDING OFFICER. The Senator from Nevada is recognized.

Mr. REID. Mr. President, I do not agree with the amendment. I strongly oppose the amendment. But I do believe the Senator from Vermont, knowing him the way I do, thinks his position is right. I hope in this day that we have been able to educate those Members of the Senate, including my friend from Vermont, how people do not understand the western part of the United States, how, in fact, it would have been better had this legislation been presented to the authorizing committee where hearings could have been held, where evidence could have been taken, and that the matter could have reached the floor, if in fact it would have reached the floor, through the ordinary authorizing process. This is not the appropriate place to deal with a matter of this magnitude.

For those Members present who may not understand the grazing fee formula, let me, Mr. President, provide a few brief facts to shed additional light on this complex matter. As we have been told by people who have appeared here before, PRIA, or the Public Rangelands Improvement Act, was passed in 1978, and is based on a set of three things: First, the price of beef; second, the cost of production; and third, the lease rate index, which is the difference between the cost of grazing on public and private lands. These issues have more to do with policy than appropriations, and therefore it should not be on this Interior appropriations bill.

It has been argued that grazing fees on public lands constitute a subsidy. Conveniently, this argument generally falls well short of a thorough examination of factors that go into grazing livestock on public lands.

Mr. President, I should like to take a short time this afternoon to talk about some things that have been raised during the debate and things that have been raised only indirectly during this debate. These are what we can call key talking points about grazing fees.

For example, Mr. President, over the past 4 years the grazing fee has been increased by almost 50 percent—to be exact, 46 percent. The grazing fee formula has changed because it was set up to change. But the formula does provide, under the bases that I just indicated, stability and predictability. That is what this important part of American industry, that is, the cattle industry, needs, stability and predictability. That is why in 1978 the formula was developed.

It is true that private rangeland rents are typically higher than public rangeland grazing fees. We acknowledge that. But we have not discussed here today in any detail the fact that private leases are self-sufficient units, where the owner typically provides fencing, water improvements, and roads.

On public lands, by contrast, Mr. President, almost nothing is provided. Instead, the public leaseholder must bear most of these costs, including larger management costs, higher death loss and poor animal performance due to the inherently wider open range environment.

Finally, ranchers leasing public lands also bear the increased costs of complying with today's range management guidelines—and we will talk about some of those, but they are significant.

Public land livestock grazing makes a significant contribution to rural economies in the West. Mr. President, consider 88 percent of the cattle produced in Idaho, 64 percent in Wyoming, and 63 percent in Arizona depend in part of public grazing lands. In Nevada, my State, 87 percent of the land is owned by the Federal Government. We cannot lease private lands. It is owned by the Federal Government—87 percent of it.

For this reason, the Director of the Bureau of Land Management maintains that significant increases in grazing fees would result in devastating impacts on Western States where the ranching areas have historically low base values.

Even if no livestock grazing were permitted, the Bureau of Land Management and the Forest Service would still bear the cost of basic legislative requirements such as monitoring, analysis, and management. In fact, if the practice of grazing lands ended tomorrow, the Bureau of Land Management estimates that its range management program budget would increase by as much as 50 percent.

I think it is of note, Mr. President, that in 1990 the Bureau of Land Management grazing fee receipts were about $19 million, roughly two-thirds of the BLM's $29 million budget. Those moneys would have to come from someplace.

I think it is also interesting that there are many, many scholars who talk about the ranges of this Nation being in the best condition they have been in during this century.

I have a magazine article here that we distributed, Mr. President, to all the Senators. We did that last year. It is interesting that in this magazine we supplied to the entire Senate—Range magazine, spring of 1991, on page 12 there is a picture from the State of Nevada. In fact, it is a picture within a picture. It shows some rangelands with grass that is knee high. But on the inset in this photograph, we have a picture taken in 1919 that shows devastation. It shows mud holes, it shows the exact same feature of land, without thick foliage on it; the other devastated because of overgrazing. This is how the rangelands have improved.

There is also a picture from the Santa Rosas, also in Nevada, that shows a hillside that is denuded, that has been overgrazed especially by sheep, and it shows there being nothing in this land. Whereas, in 1991, it shows beautiful, thick rangeland.

There are many other such examples that show the change of the rangelands based upon proper management. Rangelands have not gotten worse. They have gotten better.

It is like mowing a lawn or pruning. Controlled grazing promotes plant vigor and diversity, aerates soil and scatters seeds. Grazing itself, plus the brush clearing, and grazing operations also help prevent fires.

That, Mr. President, is fact, not fiction.

We know that by bringing on water and salt for livestock, and the other improvements that ranchers make, that the rancher invites a host of other animals, including, in fact, many predators.

On public lands, the cost of predation and disease are cyclically higher than those on private lands. Wide open spaces are what we are talking about. The cost of lost livestock is very high. Then there are broken fences, wounded stock, trash, and the like. Unfortunately, often this comes from the public, which also shares this land. That is what multiple use means. And for the western rancher, this is all the cost of doing business.

Most of the ranchers who depend on Federal lands, we have been told time and time again, are small, family-run operations, and they are. Many make under $28,000 and many make a lot less. For example, in South Dakota during the late 1980's, the bankruptcy rate among public land ranchers was over three times that of ranchers who use private lands. Struggling with the availability of land and sheer geography, the rancher is in no position to shop for land. He cannot very well haul his stock around looking for more affordable private pastures to rent.

Even if public grazing were ended tomorrow, the next day, next week, next month, next year, the agencies would still have to make substantial outlays to take care of these lands. You just cannot let them go.

In 1987, the Interior Assistant Secretary Griles testified that such basic activities as modern analysis management would require still 40 percent of BLM's range budget. What we have to understand in this debate, Mr. President, is that cattle contribute as much, for example, to Montana's economy as wheat does to the economy of Kansas, or oranges to the State of Florida.

But Montana is hardly the only Western State that depends on affordable public forage; 88 percent of Idaho's cattle depend on public forage. In States like Wyoming and Arizona, this figure is also high, better than 60 percent. In Nevada, it is also very high.

I have here some quotes from people who are talking about these rangelands. These are direct quotes. I will give a couple of them. This is from Pa-

tricia Honeycutt, executive director of the Public Lands Restoration Task Force for the Izaak Walton League of America, a conservation group. Here is what she said:

There has never been a time when a conscientious cowboy (livestock herder) has been more valuable to the West. In his act of being environmentally conscientious with his livestock, he's helping bring back watershed, which leads to increased water resources. If this were left to natural forces alone, there are places in the West where the process could take a century or more. But where there's conscientious cowboy, we can cut that time to about a decade. I've seen it done.

A Georgia cattleman by the name of Bill Bullard said:

My first impression (on seeing a public range) was that if a rancher was paying anything to graze that land, he was paying too much.

The U.S. Forest Service:

Twenty percent of public grazing permits and allotments go unused by ranchers, in part because of the high cost associated with their use.

Finally, Cy Jamison, the Director of the Bureau of Land Management, says:

If ranchers are removed from public land, the cost to government of managing the range in their place could rise by as much as 50 percent.

I have also, Mr. President, a letter that I ask unanimous consent be made part of the RECORD. This letter is from Roger E. Porter, Assistant to the President of the United States.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

THE WHITE HOUSE,
Washington, April 2, 1991.

Hon. MALCOLM WALLOP,
Russell Senate Office Building, Washington, DC.

DEAR MALCOLM: Thank you for your thoughtful letter to Governor Sununu expressing your concerns about Federal grazing fee legislation.

As you are aware, the Bush Administration supports the current system based on the PRIA grazing fee formula established by the Public Rangelands Improvement Act of 1978. In his recent testimony before the House Interior and Insular Affairs Subcommittee on National Parks and Public Lands, Bureau of Land Management Director Cy Jamison stated unequivocally that "the present system is inherently more fair than the proposals in H.R. 481 and H.R. 944."

We believe there are compelling reasons to continue the current grazing fee system. The grazing fee formula acknowledges the contribution of Federal permittees to the maintenance of the public rangelands, And abandonment of the formula could significantly harm the economic base of many Western communities.

Thank you again for taking the time to express your views about the grazing fee issue. We appreciate your interest in working with the Administration to achieve a workable and effective grazing policy.

Warmest regards,

ROGER E. PORTER,
Assistant to the President for Economic and Domestic Policy.

Mr. REID. This is written to Senator MALCOLM WALLOP. It says:

As you are aware, the Bush Administration supports the current system based on the PRIA grazing fee formula established by the Public Rangelands Improvement Act of 1978. In his recent testimony before the House Interior and Insular Affairs Subcommittee on National Parks and Public Lands, Bureau of Land Management Director Cy Jamison stated unequivocally that "the present system is inherently more fair than the proposals in H.R. 481 and H.R. 944."

Well, this is like, someone reminded me, having a bully on the block, and he is telling you what a great guy he is because he only beats you up every other day, while the bully before him beat you up every day. The increases suggested by this amendment are outrageous, and are not better than the legislation that Cy Jamison talked about, and that Roger Porter refers to in his letter.

Roger Porter, Assistant to the President, further states:

We believe there are compelling reasons to continue the current grazing fee system. The grazing fee formula acknowledges the contribution of Federal permittees to the maintenance of the public rangelands. And abandonment of the formula could significantly harm the economic base of many Western communities.

We have heard statements here today suggesting that Members supporting this amendment should take a trip to the West and spend a day or two, or a week, in effect watching what these cowboys do, what these ranchers have to put up with.

I had the opportunity in the last few years to visit a couple of ranches. I did this after holding a number of town hall meetings throughout the rural part of Nevada. These ranchers that came to these town hall meetings are not people that would normally come to town hall meetings. This had to be a crisis, in their minds, for these cowboys, and sometimes their families, to come to these town hall meetings.

They came to these town hall meetings because they are frightened. They are frightened because they believe their way of life is going to be wiped out.

If this grazing fee formula is increased, not all of them will go broke, but it will wind up like the people from the grasslands. With this extraordinarily high grazing formula, about half of them will go broke. But they came to these town hall meetings, which was unusual for them, as I indicated. Some of them came mad. They were upset that the Government would try to take away their way of life. Some of them came sad, afraid.

So after I attended these town hall meetings, Mr. President, I went and spent a day on two ranches. One of them was the Glaser Ranch in Elko County, NV, the other occasion, I went up into the Marys River Area to watch what the Federal Government is doing in conjunction with ranchers to increase, to improve, and to benefit that whole area; to bring up high terrain areas, to do a lot of good things that they could only do with the help of the ranchers.

The trip I took was extraordinary because I went with my friend, Norm Glaser, to his ranch. Here is a report in a newspaper of the trip that I took:

The Glaser ecology ranch tour viewed part of the Old United States Cavalry. They were there way before the turn of this century, the Fort Halleck preserve, a natural wetlands originating during the confluence of the Humboldt Creek. We also viewed irrigated, manmade wetlands made by ranchers, pond construction made by ranchers, meadow rehabilitation by ranchers, a bird island made possible by ranchers.

The rookery on the ranch is composed of hundreds of birds of various species, according to the game biologist that went with us from the Nevada Game and Wildife.

In the middle of the hot summer, August, in this clump of trees, which is not often seen in the desert, there were hundreds and hundreds of birds during the day at this resting place of theirs.

Glaser explained the ranch conservation program of providing biodiversity in this construction of ponds along with shaping, grading, and seedbed preparation. Glaser stated the enhancement program has been accelerated and has become more sophisticated in recent years with the planting of trees, milo, and other grain.

In addition, Glaser explained that the program accomplishes three things: It provides a grass cover higher in protein and increased yields. Ranchers now work with the Government to get better grass. It is better for the environment and better for their cattle. It increases the efficiency of water distribution and utilization and smoother meadows, and prolongs the life of expensive haying equipment.

Although a restoration program has been in effect for many years in the Star Valley Conservation District, it has been reviewed affirmatively by the Army Corps of Engineers and Fish and Wildlife Service to see if it complies with section 404 of the Clean Water Act. It has a positive potential for improving conditions for migratory geese, wildlife, and domestic stock. The ecosystem has definitely been improved.

In this article is a picture of two sandhill cranes we saw that day looking at us. They are there because of level pasture. Norm Glaser said he had not seen many of these cranes lately, and he hoped the work he had done environmentally will bring back more of these birds.

Mr. President, I ask unanimous consent that a statement by Robert Wright and letters by Harvey and Susan Barnes that set out what they do on the ranches be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

PUBLIC LANDS COUNCIL

My name is Robert R. Wright, and I am a lifelong resident of northeastern Nevada. I have been involved in the livestock business all of my life. My ancestors were also livestock producers, and they settled in the area in 1872.

The ranch that we own is a family operation. Our son is part-owner, and will, hope-

fully, carry on the family ranch. My wife and I have five grandchildren, and four of them help with the ranch work, when not in school. The ranch is a definite adhesive factor for our family.

One of my relatives was an organizer of the Taylor Grazing Act. He served on the committee that drew up the Act and the rules and regulations that followed. These people recognized that a coordinated system of grazing on public lands needed to be initiated. It would be interesting to have these people see the improved ranges that has resulted from their work. Unfortunately, none are alive today.

Congress was delegated the authority under the Taylor Grazing Act to set grazing fees each year. As soon as Congress convened in January it would set hearings to set fees by the billing date of March 1st. Of course, Congress rarely had the fees set by then. It was particularly difficult for the "permittees" to finalize their budgets on January 1st, not knowing what the grazing fee would be. The hearings were a hassle with the testimony being given by land-managing agencies, western congressmen and senators, livestock organizations from every western state and numerous "permittees". That is one of the desirable features of the grazing fee formula; eliminating the hearing process that was expensive and time consuming. "Permittees" can also finalize their budgets on January 1st, for they know what the grazing fee is to be. Don't do away with the grazing fee formula for it works in more ways than just setting the fee.

If the grazing fee is increased as being proposed in legislation, then "permittees" would have to decide if it was economical to produce food from the public lands. Many would just vacate, and parts of the West would become another "Grapes of Wrath".

The public land ranges that I am familiar with, have improved substantially since the enactment of the Taylor Grazing Act. There are more species of wildlife, and in greater numbers than ever before. Congress should adhere to the testimony of range researchers and university economists who are experts in their fields, rather than radical extremists and their emotionalism. The ranges today are in better condition than at any time in this century.

My family and I hope to carry on in the food producing business and particularly in the livestock part of it. It would be very disheartening to see over a hundred years of endeavor go for naught. The present grazing fee formula is not a subsidy and should be allowed to continue for it is in the best interest of everyone concerned.

BARNES RANCHES

Barnes Ranches is a Small Business family corporation established in 1968 to make it possible for us (Harvey and Susan Barnes) to acquire ownership in his parents' ranch. We now have 75% of the shares.

The ranch is located 40 miles south of Elko near the base of the Ruby Mts. Barnes' purchased it from the Ed Carville Estate in 1948. Hillery Barnes had been cattle foreman for 19 years for the Mary's River ranches north of Elko and wished to settle on a smaller operation.

Ed Carville bought tracts of land from several people to form the present main ranch. His first acquisition was in 1878.

E.P. (known to all as Ted) Carville was a Governor and Senator of Nevada. He was a lawyer and handled the selling of the ranch for the heirs. The ranch had been leased for 28 years because the family's professions were elsewhere.

During the 1940's and 1950's fencing was the primary project on public lands by Barnes. The ranch did all the labor and also bought the materials. The BLM money at that time was used primarily for artificial revegetation. Following the fences which created allotments, came wells, troughs, pipelines from spring to better distribute and increase water supplies, which also had to be mainly supplied by the ranch. We invested between $25,000 and $35,000 in these Federal land projects—which compensate for fees not recognized by non-range users. Allotment management plans were made feasible by these expenditures and intensified grazing systems have been administered by the Forest Service and BLM.

In 1948 my parents were able to buy 640 A. of fenced Federal land and in 1962 they bought 760 Acres of land being used by the ranch. This land is the only owned grazing land encompassed in the ranch. The meadow lands supply the hay for winter feed and must be free of livestock during the growing and haying season. Livestock remain on the private land from November to April 15, during which time vaccinating, culling, winter feeding and calving occurs. From April 15 to June 1st livestock are on BLM ground. After that time half are on BLM and half on Forest land. The ranch is absolutely dependent upon the rights acquired on Federal lands.

Labor costs have been kept at a minimum. The family had to be frugal and provide their ranch labor. Labor costs have been kept at a minimum.

A substantial grazing fee increase would have a devastating effect on our family operation. The profit margin on a well managed ranch is narrow even in prosperous years that we have recently enjoyed. To survive such a fee increase, the ranch would have to cut down on maintaining conservation practices and would have to curtail improvements and maintenance on federal lands. This would be the rule for western livestock operations. Our climate with short growing seasons limit any diversification opportunities for these livestock operations. By eliminating a productive segment of an area's economy, it creates a downward trend in other industries. Immediate effects may not be felt by the entire country, but I will guarantee an erosion from within will expand and in future years our nation will add a paragraph of destruction in our history.

Our son graduated from UNR this spring and wants to return to the ranch, and it is our hope that he may be able to continue the operation that has been in the family for 43 years.

NORTHERN NEVADA RANCH, MEDIAN SIZE FAMILY RANCH—ANALYSIS OF EFFECT OF GRAZING FEE INCREASE

	Number of AUM's	Cost per AUM paid	Net income	If cost of AUM is	Net income	If cost of AUM is	Net income	Difference what paid and $5.09	Difference what paid and $8.70
Sept. 30, 1990	2,902	1.81	$4,909	$5.09	($4,611)	$8.70	($15,097)	$9,519	$19,995
Sept. 30, 1989	2,264	1.86	15,978	5.09	8,665	8.70	492	7,313	15,486
Sept. 30, 1988	2,256	1.54	2,157	5.09	(6,917)	8.70	(16,144)	9,074	18,301
Sept. 30, 1987	2,760	1.35	22,243	5.09	11,921	8.70	1,957	10,322	20,286
Sept. 30, 1986	3,030	1.01	(17,788)	5.09	(30,150)	8.70	(41,088)	12,362	23,300
Sept. 30, 1985	2,684	1.35	(898)	5.09	(10,936)	8.70	(20,625)	10,038	19,727
Sept. 30, 1984	2,357	1.37	(29,125)	5.09	(37,893)	8.70	(46,402)	8,768	17,277
Sept. 30, 1983	2,519	1.40	(2,993)	5.09	(12,288)	8.70	(21,382)	9,295	18,389
Sept. 30, 1982	2,267	1.86	15,053	5.09	7,731	8.70	(453)	7,322	15,506
Sept. 30, 1981	2,519	2.31	45,650	5.09	38,647	8.70	29,554	7,003	16,096
Total		1.59	55,185	5.09	(35,831)	8.70	(129,178)	91,016	184,363

Mr. REID. I would like to read one paragraph from Wright's letter which says:

One of my relatives was an organizer of the Taylor Grazing Act. He served on the committee that drew up the act and the rules and regulation that followed. These people recognized that a coordinated system of grazing on public lands needed to be initiated. It would be interesting to have these people see the improved ranges that have resulted from their work.

Unfortunately, none are alive today.

I guess what we are saying here today is that we want understanding; we want people to appreciate what these cowboys go through, because it is not easy. We hear a lot of things kicked around about prices and whether it should be this much or that much. But what, in fact, we have here that we are trying to protect is a way of life that contributes to the economy of this country.

Mr. President, I have been to Elko County, and I was there recently. Once each year, they hold a cowboy poetry contest which has become world famous. They do not have enough rooms to take care of the people that come there once a year. These poems are written by cowboys in their bunkhouses or around a campfire. They can say in just a few words perhaps what we have been trying to say here all day. Let me read to you a poem written by Nyle Henderson, which is entitled, "How Many Cows?"

A fella from town stopped by the other day.
The talk that we had sorta went this-a-way.
He said, "I've got something that I'd like to ask you,
And if you know the answer, I'd like to know, too.
"I want to be a rancher and at prices today,
How many cows would I need to make my livin' pay?
Would a thousand cows be better than just one or two?
Do you have any advice on what I should do?"
"Now that's a tough question I'll tell you for sure,

Not one that can be solved with any one cure.
Machinery's sky high and so is the land,
And interest rates are more than anyone can stand.
"And there's imports and embargoes and all the like,
Remember now, as a rancher that you can't go on strike.
There's politicians, vegetarians and ecologists, too,
And a hundred government agencies telling' you what to do.
"There's the cost of fuel and fences and labor and seed,
And tools and tires and water and feed.
There's always a horse needin' shod and veterinary bills,
I'll telling' ya friends, ranchin' ain't all thrills!
"Startin' early in spring you'll be calvin' all night,
There's still feedin' to be done and the water's froze tight!
Insurance and utilities are always goin' up,
And remember, that wife of yours is about ready to pup.
"The whole cost of operating hasn't yet reached a peak,
While the price of beef is just pretty darn weak.
So here is the answer to this little test,
The man with the fewest is doin' the best.
"Only he's not makin' more, like you might guess,
The fact is, my friend, he's just losin' less!"

Well, I think that that is what it is all about here, Mr. President. This is not a situation where these ranchers, cowboys, are taking vast amounts of money, putting it in the bank and shipping it overseas. These are people that are barely surviving; yet, they contribute a great deal to our economy. What would rural Nevada be without ranching and mining? It has only been in the last few years that we have had mining. Mining has made a comeback, as we talked about Friday. Prior to mining, all rural Nevada had was ranching. That is how the schools were kept. That is how the roads were paved. That is how the cities were maintained. People would come to Elko, Battle Mountain, and buy a piece of farm equipment. That is how it kept going.

So it is really important to our way of life that these number of unseen expenses we have talked about are calculated and remembered by people in the Senate, because the costs are significant.

It is not easy. But to them, it is their lives. It is their lives, and in these letters I have introduced which were made part of this RECORD, they talk about their children being on the land and their grandchildren and how they work the land. That is what we are trying to do, protect a way of life.

So, if, in fact, there is something wrong with the grazing fee, let us change it by having hearings so that people from Nevada, Arizona, Idaho, and other Western States, can come and talk about what impact it would have on their lives. Do we want all the cattlemen to go out of business, or 50 percent of them?

We should be of trying to increase the formula for these rangelands, is to be decreasing the fee for those in the grassland States, because, as I have indicated, half of them have gone bankrupt because of that increased formula.

I will close, Mr. President, recognizing, as I indicated, that others wish to speak. Ranchers and cowboys, consider themselves stewards of the land and in fact they are. These pictures I have talked about here today show the dramatic improvement in the rangelands. We have heard from the people that run Government agencies; the Forest Service, and the Bureau of Land Management, saying if we are going to maintain the lands even at the level they are now maintained and you get rid of the cowboys, the ranchers, consider that you are going to have to increase our budget significantly.

Mr. DOMENICI. Mr. President, I did not intend to use 5 minutes. I wonder if those who asked for time, if they are listening, if they might not send down a word that none of us will use any time. I think we ought to just tell the Senate that a similar proposal was defeated 60 to 38 last year. And then let Senator BYRD move to table the amendment. That is what I would like to do and save a lot of time of the Senate. I understand the proponent has some time. But I am suggesting that. Perhaps what I will do, since there are a couple of Senators here, maybe they could each use a minute or so while we go to the telephones and see if we could ask the other Senators if they would permit us to yield back their time.

I will yield the floor, reserving whatever time I had.

The PRESIDING OFFICER. The Senator from Montana is recognized.

Mr. BAUCUS. Mr. President, I frankly am astounded that the Senator from Vermont is bringing this amendment before us today. We have debated this issue several times. And, frankly, it is amazing to me that here, on the Interior appropriations bill, again the Senator is again raising this issue. We have debated this issue. This is legislation on an appropriations bill.

There have been lots of hearings in the authorizing committee. There are lots of opportunities to deal with this. I frankly am a bit disturbed the Senator from Vermont is offering this amendment at this time.

Second, it is wrong. On the merits it is just wrong. Those who are offering this amendment know virtually nothing about the ranching industry—it is obvious from listening to them. The fact is—and I see a Senator who is in favor of this amendment nodding his head. He agrees he knows virtually nothing about the ranching industry.

Let me tell the Senator, if this amendment were to go through the consequences would be not what the proponents think they would be. The consequences would be that many ranchers, at least in the West—I cannot speak for other parts of the country—but many ranchers in the West would find they have no alternative but to sell out and subdivide. The consequence then is subdivisions. It is pollution. It is congestion. I do not think that is what the Senators who proposed this amendment have in mind.

In addition this is not a subsidy. Studies show and practical experience shows that the costs of operating Federal leases is greater than the cost of operating a private lease. That is basically because when you buy a private lease you buy only the grass. When you get a public lease, a public lands lease, you have to take care of the water, you have to take care of the fencing, it is up to higher ground, the grass is not as good, you have to run more cattle per acre of land. It is very tough to deal with. It is a big hassle. And, frankly, a lot of ranchers wonder whether it is even worth their while it is so much hassle, it is so expensive.

This is no big ripoff; 88 percent of the ranchers who have Federal leases are ranchers who have incomes of $28,000 or less a year. This is a ma and pa operation.

There are probably a few corporations, there may be an insurance company or two that does own property that has a Federal lease. That does happen. But the vast bulk of these ranchers are garden-variety everyday ranchers, which are the myth the Easterners have of the West, of the small farmer-rancher.

That is what they are. Again, I make two points. It is incredible to me we are debating this issue at this time.

It is incredible to me the Senator from Vermont is even offering this amendment.

And, second, on the merits, he is just wrong. Therefore, I strongly encourage the Senate to reject it.

Mr. President, I ask unanimous consent to print in the RECORD a letter from the Montana Livestock Ag Credit Co. to the Governor of Wyoming.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

MONTANA LIVESTOCK AG CREDIT, INC.,
Helena, MT, 59604, July 22, 1992.

Hon. MIKE SULLIVAN,
Governor of Wyoming,
State Capitol Building,
Cheyenne, WY.

DEAR GOVERNOR SULLIVAN: Montana Livestock Ag Credit is a Montana Corporation that has been exclusively involved with financing for ranchers and farmers in Montana for 59 years. Because of the emphasis the federal grazing fees issue has received nationally, we have looked into the ramifications to many of our customers from a "Synar type" proposal. A company officer generated a research project for an American Bankers Association Graduate School of Agri-finance. I would like to share a few highlights of our

in house study. Please note that although our financing is predominantly livestock ranchers, our portfolio consists of a 2:1 ratio of private ranches that are not directly influenced by federal grazing.

(1) Ranchers considered dependent on federal grazing (those who are dependent upon 6% or greater of their total grazing requirements from federal lands) show an operating cost per animal unit slightly above ranchers solely operating on private ground.

(2) Ranchers dependent on federal grazing are servicing a total debt load equivalent to solely private land ranchers. (We could not find an economic advantage in "debt servicing" for either category.)

(3) Ranchers dependent on federal grazing are also utilizing 18% more private land per animal unit (implies Montana's federal land dependent ranchers, whose private land is typically intermingled with the federal land, are located in areas that are less productive).

(4) Given the decreased value of ranches dependent on federal grazing and the growing value of private land, the federal dependent rancher can be in a 2 to 3 times worse debt to equity position than their "private" counterparts.

(5) In our opinion, the impact of a significant increase in federal grazing fees could put a full ⅓ of the producers dependent on federal grazing into immediate economic jeopardy.

Thank you for allowing me to share some findings of our recently completed study with you. If I may be of any further assistance, please do not hesitate to call.

Sincerely,

TIM H. GILL,
President.

Mr. BURNS addressed the Chair.

The PRESIDING OFFICER. The Senator from Montana is recognized.

Mr. BURNS. Mr. President, I want to associate myself with the words of my colleague from Montana. I will not take my 5 minutes either. I will move along.

I just want to point to the fact that this is not a ripoff. It seems the proponents of this always go back to a study that was done back in 1966 and one in 1990, an update, on which to base their assumptions. Already the business school at Pepperdine University with two very astute professors said we can draw no conclusions from those reports. They completely discount them—completely discount them. They say you can draw no conclusion from them.

So, again, we debated this last year. It was defeated last year. It is my hope that it will be defeated this year. If you want to talk about rates, like I said a while ago, we sold wheat for $3 a bushel in 1945. If the Senator wants to put on some prices there, we would like to take the increase of everything else because that is what wheat is selling for today.

When we start raising these things, it seems like the consumer does not want to pay any more for the end product and somewhere or another we have to keep the industry alive and keep these people on the land, especially those people who love it, care for it, and depend on it for their livelihood.

I yield the floor, and I reserve the remainder of my time.

Mr. CONRAD addressed the Chair.

The PRESIDING OFFICER. The Senator from North Dakota is recognized.

Mr. CONRAD. Mr. President, let me just say this is the same song, second verse. This is pretty much the same argument that we have heard repeatedly in an attempt to raise grazing fees.

I must say this to my friends who have crafted this amendment. It is pretty cleverly done. It is a significant improvement over what we have seen in the past. But I think we all know what this is. This is the camel's nose under the tent. The first thing you do is raise it on those who are over 500 in terms of a cowherd and then the rest of you look out because it is coming your way and the next thing you know every rancher who is on public lands will see a dramatic increase—a dramatic increase—in the fees that they pay.

Mr. President, that would be a mistake. Let me just say on the grasslands which has been carved out and has been treated separately under this amendment, because in the grasslands we are already paying much more than those who are on other public lands.

Mr. President, the average income in my State, the farmers and ranchers who are paying grazing fees on public lands is $19,000 a year—not the big oil companies, not the insurance companies, these are mom-and-pop operations, people who can ill-afford to take on a significant increase.

I understand that the grasslands are carved out of this, but, Mr. President, we are attempting to get the fees harmonized so the grasslands are not stuck in this position of paying much more than everyone else.

Mr. President, let me make one final point.

The Senator from Montana [Mr. BAUCUS] said, and said correctly, something that needs to be understood. There is a significant difference between a private lease and a lease on public land. A lease on Federal land requires that you maintain the fences, it maintains that you do the road work, it requires that you provide the water. Mr. President, those are substantial expenses that dramatically change the economics of these leases.

So I hope my colleagues will not make the mistake of rising to the siren song of let us raise the grazing fees to get at the big oil companies because you are not going to get the big oil companies, you are going to get the average rancher who has already faced in my State 4 years of drought. The last thing they need is to get socked with a big increase.

I thank the President and yield the floor.

Mr. BRYAN addressed the Chair.

The PRESIDING OFFICER. The Senator from Nevada is recognized.

Mr. BRYAN. Mr. President, I rise today to address the sensitive issue of the appropriate level of grazing fees for the use of public lands. The amendment before you today addresses a complex and easily misunderstood issue which deserves careful analysis. The proposal offered, for a 1-year increase of 25 percent in the grazing fee, is inappropriate and insensitive to western users of public lands who are currently under great economic distress.

A variety of legislative options relative to grazing fees have been proposed in recent years, from permanently fixing in statute the existing fee structure formula to imposing dramatic grazing fee increases.

In any event, each approach is substantive legislation, and it should be processed as such, not as an amendment to the appropriations bill.

The existing grazing fee formula was adopted by the Public Rangelands Improvement Act of 1978 for a 7-year trial period. In 1986, it was extended by Executive order. The base value of the fee is adjusted annually to reflect changes in the prices paid for forage on private lands as well as the market prices of livestock produced.

In Nevada, the majority of BLM permittees are family operations—nearly 88 percent.

Their profit margins are often slim. The entire industry is suffering in the West from severe 3 years drought, and many family operations would be severely affected by the dramatic fee increases proposed by the Senator from Vermont.

Today's fee for 1992—$1.92 per AUM—represents nearly a 40-percent increase over the past 5 years—indicating that this formula does accomplish its goal of adjusting to reflect changing market conditions.

The fact that over 20 percent of grazing permits and allotments go unused indicates that these fees are in a reasonable range.

Although I rise today in full support of the existing administrative fee formula which I believe is equitable and has worked well since its adoption in 1978, I also want to stress what I believe is the most critical issue before you today. That issue is maintaining and improving the condition of our publicly owned range lands. The fees charged for grazing and the revenue produced from the use of lands should not be the ultimate focus of our deliberations; that focus should be, instead, are we managing our public resource assets as well as we can? And are we devoting adequate resources to the task? Those issues are complex and require substantive legislative analysis, not cursory action on the appropriations bill.

I'd like to briefly note a few points of analysis. My State, Nevada, is 85.6 percent federally owned land. Because so much of Nevada is federally owned, responsible multiple use of that resource

is essential for all Nevadans—the hiker as well as the hunter; the rancher as well as the researcher.

In the West, access to public lands is critical for the cattle and sheep industry, as well as beneficial for balanced, multiple use of the lands.

Much of Nevada's Federal land is rangeland and all of it has been severely affected by 6 years of lower than average rainfall. The drought, although part of an eternal cycle of nature, has stressed the land and made the job faced by our land managers more difficult. The resources that are adequate to manage the land in an average year or a good year may be very inadequate during a critical year.

Another essential fact to consider is that grazing is a fundamental natural process, part of a food chain that existed long before modern Americans claimed this land for their own. The grass and forage consumed by livestock are renewable, and with no technological intervention, are converted to food to be consumed. Fossil fuels and chemical fertilizers are not part of the public range tradition. Although different opinions may exist on the extent to which the public resources are thus used, there is no doubt that some proper balance may be reached which allows the range to thrive and it should be used. Those who merely seek to eliminate cattle from historic rangelands are plainly misinformed, and efforts to force small cattle operations out of business by dramatic fee increases are misguided.

Well run Federal grazing programs are an essential part of rural life in Nevada. Because the nature of the public range is unique, any fee formula will necessarily result in an inexact application from range to range. However I believe the existing fee schedule does a good job of balancing cattle prices, production costs, and comparable market lease rates. The fact that much of the available grazing lands go unleased would indicate that the existing fees are in an appropriate range. Since the majority of users of the public range in Nevada are small producers—less than 100 head of cattle—they are very sensitive to market forces and will simply not be able to absorb the large fee increases that some propose. To the extent that fee increases decrease the use of the resource, Federal revenues may fall.

In a dynamic ecosystem and fluctuating market, a perfect fee structure may not be possible. The current system has served the West well, and I urge that it be maintained and that the amendment offered be defeated.

Thank you Mr. President, and I yield the floor.

The PRESIDING OFFICER. The Senator from Idaho is recognized.

Mr. CRAIG. Mr. President, I rise in opposition to the amendment offered by the Senator from Vermont.

Let me, if I might for just a few moments, argue it from a slightly different perspective of those ranchers and whether they can or cannot pay for the public grass because it is public grass, and we all know that. We have talked about public timber today. This is a bill that draws issues about public resources and how they will be managed.

But let me talk about those small ranching communities, agricultural-base communities, that are entwined within the public lands of the West for just a little bit this evening.

I am concerned about cattlemen. They make up a very large portion of my State. Agriculture is our largest industry and cattle are the largest segment of that industry, and 80 percent of our cattle in Idaho graze on public lands at some time during the year. So it is a very important part of my agricultural base in Idaho, as it is in Wyoming and Montana and Nevada and New Mexico and Arizona and on and on and on.

But what about the small community when legislation like this begins to drive the price up into levels that no longer allow that ranch to be an economically viable unit? Ranches that have been in existence and within a family for three generations go by the wayside.

We can accept that; yes, it was nice to have them around; yes, they were good stewards of the lands; yes, they were concerned about the environment in which they lived; all of that was true.

What else happened? When they left, so did the tire shop, so did the grocery store, so did the dry goods store, because you see, we still have those kinds of entities in those small western communities. They, too, go because ranchers, agriculture, who spread amongst that vast array of public lands are the glue, the entities that hold the whole process together.

So it is not just big ranchers or small ranchers or medium-size ranchers or 500-head or less operations or 500-head or more. It is also small, husband-and-wife businesses on Main Street America, U.S.A. west, if you wish to say it, of the Mississippi River that is also going to go. It would be true in Vermont if the dairy industry, who happens to be making a little better money this year than they did last year, were to go. It would not be just the dairyman, just the dairywoman, their families that would go, the small communities would go, too.

I am sensitive to that concern my colleague from Vermont has had, and we have worked together on those issues. But these issues are not just the target, oftentimes they are the whole setting, the whole scenery, they are everything within the frame of the picture besides just the focal point. That is the issue here. That is why we have historically allowed a formula that adjusted and recognized market forces and understood that these were extremely valuable parts of a total picture.

So let us not be caught off guard tonight in a single focus, in a single subject, within the boundaries or within the frame of that, but the whole of the community, the whole and the fabric of that western lifestyle that is part of what we call this country, America, and what we recognize is an important part.

I will not be nostalgic because we have said it must be marketed in a wise and proper way, and we have done that. It is called the PRIA formula. It is sensitive to market forces. It moves with them. It also recognizes the cost of doing business. It puts inside the calculation a good deal more. It does not arbitrarily reach out and say if you are 500 head or more, you are bigger; if you are bigger, you must have more money, and therefore you ought to be able to pay more. That oftentimes is simply not the case depending on the situation.

I hope this body will do as they did last year by a substantial margin; reject this amendment. It is not the way to solve those problems. We have held hearings in the committee. We are looking at this. I think the grazing industry of the West is very sensitive to the issue at hand.

I retain the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. SIMPSON addressed the Chair.

The PRESIDING OFFICER. The Senator from Wyoming is recognized.

Mr. SIMPSON. I join with my colleague from Idaho. I agree fully with his fine presentation.

I recognize that this is not some rich versus poor issue, not some new class struggle element that is always presented before the body when reason and facts fail, just trot up the usual load of emotion, fear, guilt or racism. I have been here long enough to see all this and how it works.

So I hope you will remember what happened to this vote the last time. I do not think there would be anyone who would want to change their position from the last opportunity to vote on this. I certainly would think the arguments have not changed. But let us deal with the true facts. Everyone is entitled to their own opinion, but no one is entitled to their own facts, and this is far from a rich versus poor issue which seems to get good purchase sometimes in this place.

So I certainly ascribe to the views of my friends from Idaho and New Mexico.

I rise today to express my opposition in the strongest terms to the efforts by my colleague from Vermont to raise grazing fees on public lands. His effort to restructure the grazing fee formula strikes at the very heart of my State's

economy. It is an attempt to circumvent the fair evaluation process which the Energy and Natural Resources Committee committed itself to last year.

This issue has become a stalking horse for the environmental extremists who want to stop all grazing on public lands. They chose the issue because they thought it was saleable to the public and Congress. Their emotionally pitched crusade is based on the ill-informed concept that wealthy ranchers are the largest recipients of Federal grazing subsidies. That is simply not true.

We have before us a large number of studies and appraisals done by private and governmental agencies, associations, and institutions—all stating different conclusions on this issue. Each of these reports are produced by entities with agendas that are not the least bit subtle.

Each of these studies has a special interest objective and creates, manipulates, and discards data to present biased conclusions in order to support predetermined positions. I often say—everyone is entitled to their own opinion. That is their right. But, no one is entitled to their own facts. This issue is being grossly distorted by custom-generated data.

Here are the salient facts. The State of Wyoming has over 50 percent public lands. The Bureau of Land Management is the largest landowner—managing well in excess of 18.4 million acres; 17.4 million acres are classified as rangeland. 52 percent of those properties are classified as being in excellent condition.

The vast majority of the total 2,961 producers in Wyoming are small family ranching operations. Some of those family operations pool their resources and operate under "AMP's" allotment management plans—there are 177 AMP's which, combined operate on 5.4 million acres.

The Jeffords amendment would implement a two tier system for the annual fee by raising the grazing fee to $2.40 for producers with over 500 head of cattle and maintaining the current $1.92 level for producers with less than 100 head of cattle. The annual fee fluctuation would be capped at 25 percent. The premise for the large producer-small producer approach is misguided. It is based on the assumption that ranchers with stock levels greater than 500 are wealthy and can easily pay a significant fee increase. They cannot.

Family ranches in the West are in dire financial straits—the are pooling resources to cut down on overhead costs just to make ends meet. The fiber of rural America is being further threatened by this amendment. This ill-advised amendment could truly lead to the demise of the banks, businesses, schools, and economies of many small towns in the West.

I strongly urge my colleagues to oppose this amendment.

Mr. DOMENICI. Mr. President, I might say to the distinguished chairman of the Appropriations Committee, I believe all of those who wanted to speak in opposition are going to yield back their time when I am finished and then we have 5 minutes for the Senator from Vermont.

I want to say to the Senator I appreciate his remarks today and obviously the Senator has come a ways from last time. I regret that I do not believe the Senator has come far enough.

Let me also suggest that we have a lot of studies. Anybody who believes the GAO study believes in fairy tales. The most renowned professor and academician in this area is Frederick Obermiller, Oregon State University, professor of agriculture and resource economics. I ask unanimous consent to put in the RECORD his detailed study of the current formula. It says in every respect it is fair, equitable. The Government is getting a fair return. The ranchers are paying a fair amount of money. The private sector leases are not relevant to the public sector. It is analyzed thoroughly. Anybody who is really interested in why we believe what we have is right and we do not think we ought to fix it because it is not broken should just take a little time to read this.

There being no objection, the study was ordered to be printed in the RECORD, as follows:

[Testimony Presented to the Subcommittee on Public Lands, National Parks and Forests, July 1, 1992]

IN SEARCH OF REASON: THE FEDERAL GRAZING (FEE) DEBATE

(By Frederick W. Obermiller, Professor of Agricultural and Resource Economics)

INTRODUCTION

Chairman Bumpers and members of the Subcommittee, it is a very great honor to be here today and have the opportunity to share with you information that may be helpful to you and your colleagues. Federal rangeland use and grazing fee issues have been controversial public policy issues for many years. We have an opportunity to bring reasonable closure to the debate if we are willing to learn from and heed the lessons of the past.

Similar hearings on the federal grazing fee and federal rangeland management and use issues occurred in both the House and the Senate in 1963, 1969, 1976, 1978, 1987, 1989, 1991, and earlier this year. The Hearing Records reveal that the arguments and information heard today are not new, although some of the actors have changed. This Subcommittee last met and heard these discussions August 9, 1978. A comprehensive public land grazing bill was discussed, a bill that when passed became the "Public Rangelands Improvement Act of 1978." Then, as now, only a small portion of the bill concerned federal rangeland grazing fees; yet most of the debate centered on the fee issue. If history does repeat itself, the fee issue will dominate today's hearing as well.

Why? Grazing fees are symbolic of the broader Western federal rangeland policy problem. That problem is one of property rights and conflicting interests. In the West, we have *de facto* private rights on federal lands, legislatively imposed public rights on private lands, and multiple demands on all lands. There simply is not enough land to fully satisfy all demands, one of which is demand for federal rangeland forage made available at a price reflecting its value, all things considered.

A brief historical review of the settlement of the West may shed light on our policy problem. What are our Western federal rangelands, and why are they in federal ownership? What has been the history of regulated livestock grazing on the federal rangelands? What is the present structure of the federal land dependent Western livestock industry? A better understanding of the answers to these questions helps frame the current public policy debate.

WHAT, WHERE AND FOR WHOM ARE THE WESTERN FEDERAL RANGELANDS?

Of the 2,271,343,360 acres of land in the United States, 662,158,197 acres or 29 percent of the Nation's land surface is in federal ownership (*Public Land Statistics* 1991). Most of the federal land, some 598 million acres (90.3 percent of all federal land), is public domain: either original public domain land that never left federal ownership or lands acquired by the United States through exchange of original public domain lands or timber for other lands.[1] A smaller portion of the federal owned lands, 64.3 million acres (9.7 percent), are lands acquired from private and other public owners through purchase, condemnation, or donation (Figure 1a). A large share of these acquired lands were obtained under various New Deal programs between 1933 and 1940, including the purchase and condemnation of 11.3 million acres of "submarginal" lands in the Great Plains by the Federal Emergency Relief Administration.[2]

The Dominant Federal Land Management Agencies

Today, these public domain and acquired federal lands are managed by several federal agencies, but primarily by the Bureau of Land Management (BLM) in the Department of the Interior and the Forest Service in the Department of Agriculture. The BLM manages 272.0 million acres, or 41.1 percent of the Nation's federal lands. The Forest Service manages 192.1 million acres, 29.0 percent of the federal lands. All other agencies combined manage a share (198.1 million acres) roughly equal to that of the Forest Service (Figure 1b).

If Alaska is excluded, the picture changes. In the 48 contiguous states there are 1,901.8 million acres including 413.7 million acres of federal land (21.8 percent of the total land area). The BLM manages 179.5 million acres (43.4 percent) while the Forest Service manages 169 million acres (40.9 percent) of the federal lands in the 48 contiguous states. The total acreage managed by each agency in the 48 contiguous states is comparable, with the BLM being the slightly larger federal land management agency (*Public Lands Statistics* 1984 and 1991). These acreages are depicted in Figure 2a.

The BLM is the predominant manager of the original public domain acreage however. Virtually all of the BLM acreage (96 percent) is public domain. Merely 0.8 percent of the BLM lands (2.3 million acres) are acquired lands.[3] In contrast, 28.6 million acres or 14.0 percent of the Forest Service land (85 per-

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cent of which is located in the midwest and eastern states) is acquired land, reflecting the growth through the 20th century in the federal land holdings managed by the USDA Forest Service. The acquired Forest Service lands include 3.8 million acres that a remnant of the "submarginal land utilization program" (the original 11.3 million acre LU Project lands) of the New Deal era. These 3.8 million acres are known today as the National Grasslands.[4]

The federal lands are by no means uniformly distributed among the 48 contiguous states (Figure 2b). It is clear that federal land management in the Western states is less important for the Forest Service than for the Bureau of Land Management. In the 11 Western states, almost half (48.3 percent of 753 million federal acres) of the land area is in federal ownership. Here, the 363.7 million acres of federal land are managed primarily by the BLM (48.9 percent or 177.9 million acres) and secondarily by the Forest Service (34.9 percent or 127 million acres). In contrast, of the 50.0 million acres of federal land in the 37 eastern states, nearly all (84.0 percent or 42 million acres) is managed by the Forest Service and merely 3.2 percent (1.6 million acres) is managed by the Bureau of Land Management. This represents only 0.6 percent of the land managed by the BLM in the 48 contiguous states.

The BLM is essentially a Western United States federal rangeland management agency. The Forest Service, slightly smaller in terms of acreage managed, is more diffuse and has less of a Western rangeland management focus. Under the auspices of the Federal Land Policy and Management Act of October 21, 1976 (FLPMA) and the National Forest Management Act of October 22, 1976 (NFMA) both agencies manage their lands for multiple uses and users, including domestic livestock grazing, however.

GRAZED FEDERAL RANGELANDS MANAGED BY THE DOMINANT AGENCIES

What, and where, are the Western federal rangelands? The Western public rangelands are defined in Section 3(a) of the Public Rangelands Improvement Act of October 25, 1978 (PRIA) to include ". . . lands administered by the Secretary of the Interior through the Bureau of Land Management or the Secretary of Agriculture through the Forest Service in the sixteen contiguous Western States on which there is domestic livestock grazing" (43 U.S.C. 1902). Defining further and following Section 3(i) of PRIA: "The term 'sixteen contiguous Western States' means the States of Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington, and Wyoming." In addition, there are about 132,000 acres of federal rangeland in the state of Texas.

Therefore, the 17 Western federal rangeland states can be identified as the 16 Western public rangeland states plus Texas. Of these 17 federal rangeland states, 11 are subject to the grazing fee formula established in PRIA (the National Grassland states of North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, and Texas were exempted from the PRIA formal fee contained in section 6 of PRIA).[5] These various combinations of Western rangeland states are depicted in Figure 3.

This operational definition of the Western federal rangelands is important because it implies that these rangelands are more extensive than the familiar Bureau of Land Management grazing lease lands (Taylor Grazing Act Section 15 lands) and grazing districts (Taylor Grazing Act Section 3 lands) and the Forest Service's National Forests grazing allotments. The federal rangelands of the Western United States also include the National Grasslands of the nine Great Plains states. Just over half (51 percent) of the National grasslands' total acreage is contained in six National Grasslands located in North and South Dakota.[6]

Domestic livestock grazing is the most widespread or extensive use of the Western federal rangelands. The federal rangelands of the 17 contiguous Western states (including Texas) consist of some 282 million acres (177 million administered by the BLM and 105 million administered by the Forest Service). Of this total acreage, in 1990 about 210 million acres (or 74 percent of the Western federal rangelands), were eligible during some portion of the year for domestic livestock grazing in combination with other commodity and amenity uses of the federal rangelands (Public Land Statistics 1990 and Grazing Statistical Summary 1990).

These grazable Western federal rangelands (Figure 4) include about 160 million acres administered by the BLM (90 percent of the BLM lands) and 50 million acres of National Forests and National Grasslands (less than one-half of the total federal rangeland acreage in the Western Region of the National Forest System). The BLM, then, is a Western United States federal rangeland management agency with a strong livestock use focus. In contrast, the Forest Service manages somewhat less federal land, is more national in scope, contains far less grazing land, and has a weaker livestock use focus. Again, both are multiple use land management agencies however.

FOR WHOM ARE THE WESTERN FEDERAL RANGELANDS MANAGED?

Multiple use management implies multiple user groups, and multiple interests in federal land use and resource pricing policy. As public policy evolves and additional uses are legitimized in federal land law, demands for already fully allocated federal land resources to newly recognized uses materializes. This exerts upward pressure on values of federal resources previously allocated to customary or traditional uses.

The federal grazing fee/rangeland resource use controversy really is not a debate over the appropriate price of the federal rangeland forage resource, but rather is a debate over the priorities among alternative uses of federal rangeland resources (Burkhardt and Obermiller 1992). The federal grazing fee issue cannot be fully understood nor constructively debated if the pricing (fee) question is separated from the associated federal rangeland resource use issue—the relative priority of domestic livestock grazing as one of several authorized multiple uses of federal rangelands

The Public Land Law Review Commission (PLLRC) recognized the roots of the federal land use debate in its final report recommending comprehensive changes in federal resource law (One-Third of the Nation's Land 1970, pp. 6-7). According to the PLLRC, there are six publics who express different interests in the federal grazing fee and more fundamental federal rangeland use policies of the United States:

1. The national public

Taxpayers who seek public policy to sustain environmental quality and production capability, wish to keep consumer prices low, and want federal resource management programs to recover administrative costs;

2. The regional public

Commercial interests in regional employment and economic growth who advocate community stability as a federal land management goal and wish to retain access to the federal rangelands and its resources;

3. The Federal Government as sovereign

Assuring access on equal terms to all potential users of federal rangelands including the assignment and limitation of rights to use those resources, and otherwise promoting the general welfare while refraining from unfair business practices vis-a-vis the private sector;

4. The Federal Government as proprietor

Sharing with the National Public a desire to recover costs of administering federal rangeland use programs, seeking a return on its productive assets, and sustaining the long term productive capabilities of federal rangelands;

5. State and local governments

Deriving revenues in lieu of taxes and commercial income from the private uses of federal rangelands and thus seeking an equal voice in implementing environmental, land use, and land disposition programs; and

6. Users of the Federal lands and its resources

In common with State and Local Governments, seeking participation in federal rangeland management and use decisions, demanding equal access opportunity under explicit terms and conditions of use agreements, expecting fair compensation for abridgement of those terms and conditions, and advocating federal resource pricing standards consistent with the values of federal rangeland resources to the users of those resources.

In short, the PLLRC identified many different publics, all of whom have legitimate interests in the management and use of federal lands. No one public was given priority in interest relative to other publics. Three of the publics (Regional Public, State and Local Governments, and Users) thus acquire local proprietary interest in the management, use, and disposition of federal rangelands. This is the crux of the federal rangeland policy debate.

INSTITUTIONAL HISTORY AND THE FEDERAL GRAZING FEE/RANGELAND USE LINKAGE

Domestic livestock grazing was first regulated on public domain lands in the West reserved as federal forests. Regulation of domestic livestock grazing was due largely to concerns about water supply and water quality in the headwaters of streams used by downstream communities (Yearbook of the Department of Agriculture for 1901, p. 337). Soil erosion, range condition, and livestock industry stability concerns brought the remaining public domain rangelands under regulation several decades later. The development of those regulatory laws and federal land management agency practices created the Western federal rangeland grazing system (the geographic extent of which is depicted in Figure 3) that now exists. These are significant policy implications in the history of the development and functions of our Western Federal grazing institutions.

REGULATED GRAZING ON FEDERAL FORESTLANDS

Livestock grazing on federal lands was first regulated in 1896 on the Forest Reserves administered by the General Land Office in the Department of the Interior. This regulation was apparently at the instigation of Gifford Pinchot who was, at that time, Chief of the Division of Forestry in the Department of Agriculture (Steen 1976 pp. 65-68). A permitting system was extended to established operators who grazed sheep and cattle on

spatially identifiable parcels of land located in the Forest Reserves (parcels subsequently to be called "grazing allotments") in the Western United States. The goals of the permitting system were to (1) assure sustainable stocking rates, (2) use carrying capacity with respect to grazing as the determinant of allotment size, (3) be equitable in the granting of permits, and (4) maintain flexibility in the regulation of grazing under the terms and conditions of the permit.

The Transfer Act of February 1, 1905, conveyed 85,627,472 acres in 83 Forest Reserves from the U.S. Department of the Interior (USDI) to the U.S. Department of Agriculture (USDA). The Transfer Act also allowed all stumpage receipts, *grazing fees*, and other revenues from the sale of Forest Reserve resources to be placed in a special Treasury fund to be used for the *"protection, administration, improvement, and extension of the reserves."* [emphasis mine] The Forest Service was established within USDA as the administering unit with Pinchot as its first Chief.

Pinchot further refined the USDI permitting system. Pinchot extended the standard term of the permit to ten years subject to renewal (subsequently called "term permits"); and required that the permittee own sufficient nearby private property (subsequently called "commensurable base property") to be able to support the permitted number of livestock during that portion of the year when the livestock was not grazing on the Forest Reserves.

On July 1, 1905, Pinchot published his first set of comprehensive regulations governing the management of the Forest Reserves. His *Use Book* devoted considerable attention to the regulation of domestic livestock grazing with objectives of those grazing regulations being (1) resource conservation, (2) protecting the financial welfare of permittees, and (3) protecting the original permittees from outside competition (Steen 1976, p. 79). The *Use Book* clearly indicated that local residents would have preferential and enforced rights to use the resources of the federal forest lands: "Forest reserves . . . are patrolled and protected, at Government expense, for the benefit of the Community and home builder" (*Use Book* 1905, p. 7).

On his own authority as Chief (without explicit Congressional sanction), Pinchot installed an administratively determined grazing fee effective in the 1906 grazing season. An administered fee was selected over competitive bidding because ". . . It would have jeopardized the necessary continuity for stock production" (Steen, p. 67, fn. 51). The basis for the grazing fee was "reasonableness" considering the value of the permit to the permittee; and as noted the resulting fee receipts were used to manage and expand the Forest Reserve system. By 1907, when the Forest Reserves were renamed the National Forests, the system had expanded to 168 million acres.

Livestock operators protested both the imposition of grazing fees and the reductions in permitted stocking rates that had begun in 1897 and were continued after the Reserves were transferred from USDI to USDA. Their protests notwithstanding, in the Report of the Forest Service for 1906 Chief Pinchot stated:

"Opposition to the fee is disappearing. There is no longer any doubt as to the advantages of preventing conflict and overgazing on the ranges. Under restricted grazing cattle and sheep keep in better condition and yield a better profit, and the range is not injured . . . Every effort is being made to give the stockmen the fullest practicable use of the range. Small nearby owners have the preference, larger regular occupants come next, and owners of transient stock come third."

REGULATED GRAZING ON THE PUBLIC DOMAIN

Elsewhere in the West, livestock grazing remained temporarily unregulated on 20 million acres of vacant, unappropriated, and unreserved public domain rangelands (Muhn and Stuart 1988). As time went by, the Western public domain lands became increasingly crowded and progressively overgrazed—a typical "Tragedy of the Commons" phenomenon.

"As competition for forage tightened, along with the conflicts between sheep and cattle and between stockmen and "nesters", the dominant effort of most stockmen to gain or retain control of the range overshadowed any thought of resultant damage, and led eve at times to the malicious "trampling into dust" of areas of feed, to drive back crowding neighbors, or in retaliation. No responsibility was felt for preserving the range for the future . . . It was all free, open grazing; Uncle Sam owned it, and it was a clear case of first come first served and devil take the hindmost" (Wallace and Silcox 1936, p. 182).

The root of the problem was that the federal government was not meeting their needs. Stockraisers had to have more than 160 acres of range for their herds" (Muhn and Stuart 1988, p. 36).[7] The public domain provided the complementary balance of the forage supply but there was not enough go around.

By the early 1930s the severity of the overgrazing problem coupled with the social and environmental instability of that era led both the Administration and Congress to the conclusion that "maladjustments" in Western agriculture needed correction. The New Deal era private land acquisition programs previously discussed were one outcome.[8] These programs viewed regulated livestock grazing as preferable to farming in the environment of the Semiarid West.[9]

Similar concerns about the state of the unreserved public domain rangelands led to a series of general grazing lease bills introduced by various Western Congressmen. Although pockets of opposition to regulated grazing were strong, by 1934 the instabilities, accentuated by drought and Depression, created a climate favorable for passage of legislation.[10] The Taylor Grazing Act of June 28, 1934 called by President Franklin Roosevelt ". . . a great step forward in the interests of conservation, which will benefit not only those engaged in the livestock industry, but the nation as a whole" (Muhn and Stuart 1988, p. 37) was the result. The preamble to the Taylor Grazing Act (TGA) reads as follows:

"Top stop injury to the public grazing lands by preventing overgrazing and soil deterioration; to provide for their orderly use, improvement and development; to stabilize the livestock industry dependent on the public range.

The Taylor Grazing Act was patterned in part after the system of regulated grazing on the National Forests devised by Pinchot. The most significant difference was that, for the first time, the Secretary of the Interior was given explicit statutory authority to level "reasonable" grazing fees as a independent element of a comprehensive mandate which included, as a separate element, control over the timing, intensity, and amount of permitted overstock grazing (the "grazing preference"). The interpretation of what a "reasonable" grazing fee constitutes was left to the discussion of the Secretary of the Interior. For many years thereafter the Administrative interpretation was that the grazing fee should cover the costs of administering a minimal public domain grazing program, allowing for the quantity of forage authorized for use under the terms of TGA Section 3 grazing district permits and Section 15 grazing leases (Secretary of Agriculture of the Interior 1977, p. 2–5).

LINKAGES AND HISTORICAL LESSONS

The institutional developments reviewed above are important because they illustrate the age and the roots of the current federal grazing fee debate. These roots are almost a century old, which in itself suggests why the parties to the debate are so deeply entrenched. The principal roots of the debate are as follow.

Of perhaps most significance is the fact that the Western federal rangeland forage "market" is not, and never was, an open and competitive market in which both price (the grazing fee) and quantity (the amount of federal forage taken) vary in relation to one another. Price (fee) always has been administratively set, based at least initially on some set of "reasonable" criteria in relation to the Federal Government's (acting as proprietor) costs of providing permittees with access to the permitted federal rangeland forage supplies and of enforcing the terms and conditions of the grazing permits. Quantity (authorized use levels of stocking rates) always has been set administratively as well, but independently of fee levels, based on land resource conservation criteria.

Second, the permit to graze, awarded on the basis of preference in prior use patterns (including the location of grazing, customary season of use, and associated stocking rates) and enforced against trespass by the Federal Government acting as sovereign, has the attribute of a partial property right.[11] The federal land management agencies have consistently referred to that "right" as a "privilege" but in the minds of the permittees as well as the Internal Revenue Service (which attaches estate taxes to it) and some economists the permit is a valued "use right."[12]

Third, the value of the permit accrues as a result of federal land laws restricting homesteads to 160–640 acres. Given privately owned feed and forage resources associated with these relatively small acreages, with the permit a viable commercial ranching operation was possible, while in some areas a ranch could not operate without a permit. Today, in some areas fee simple base properties could be rearranged if each such property lost its federal grazing permit, but probably at additional cost per unit of output. In either context, permit value is license value accruing to existing operations holding a federal grazing permit. Further, the permit's license value is the direct result of the original homestead laws and the commensurable base property restriction required as a condition of the conveyance of the permitted right to graze livestock at a certain stocking rate and season of use on a specific allotment (Torell et al. 1992).[13]

Fourth, the permit is, at least in part, a commercial business license granting long-term seasonal use privileges to the federal rangeland rancher. This allows the rancher, or permittee, to maintain an economically viable ranch unit year-round. Hence, federal rangeland forage and space is a complementary land input, not a short run substitute in production, for privately owned land and other resources.[14]

Fifth, because permits are renewable long term use agreements given preferentially to

smaller local ranchers with traditional dependence on nearby federal rangelands, rural communities have developed in proximity to the federal rangeland ranches. These rural communities act, in part, as local federal land ranching service centers. Thus, the stability of the federal rangeland dependent community is linked to the stability of those permitted ranching operations. This helps explain the extent of local interest in field hearings on the federal grazing fee and related federal rangeland use issues. Recalling again the various publics identified by the PLLRC, there are both (1) regional public and (2) state and local government interests in the federal rangeland resource and its access price.

Sixth, both Congress (in the Taylor Grazing Act and more recent legislation) and the federal land management agencies have historically acknowledged that economic stability (at the ranch, local community, and Western livestock industry levels), and both on-site and off-site resource conservation, are the basic goals of federal rangeland management and use policy. Therefore, the concept of sustainability as applied to federal rangeland management, use, and pricing has socioeconomic as well as environmental connotations, as reflected in the legitimacy of the interests of all six groups identified by the PLLRC in the federal rangeland policy debate.

SOCIAL AND ECONOMIC IMPLICATIONS OF THE FEE/USE LINKAGE

These six federal grazing fee/rangeland use linkages have strong implications for market behavior in the Western rangeland livestock industry, and therefore have equally strong implications for changes in fee policy. These implications include the following:

(1) The "commensurable base property" requirement imposed by the sovereign Federal Government as a condition of authorized public rangeland livestock use is an institutional restriction on freedom of entry in the federal rangeland forage market, meaning that the market cannot function with perfect efficiency. The commensurability requirement causes competitive bidding as a means of establishing grazing fees to be destabilizing, at least in the short term, and would probably require the Federal Government as proprietor to impose fewer restrictions on the use of the grazing permit (Obermiller and Barlett 1991). It is not likely that competitive bidding, given commensurability requirements and business management implications for the federal rangeland management agencies, would be politically acceptable to either the federal rangeland ranching industry or to the federal bureaucracy.

(2) The relative scarcity of private forage alternatives to federal rangeland forage during the permitted season of use implies that permittees are price-takers with relatively little market power vis-a-vis the federal government. Hence, Administrative or Congressional attempts to increase federal grazing fees can be expected to be opposed by the federal rangeland ranching industry in the political arena, since the permittees see no viable market alternative to federal forage during the permitted season of use.

(3) Even if fees are kept at current levels, reductions in grazing permit forage preference and authorization levels can be expected to put significant upward pressure on private rangeland rental rates in local markets, leading to disruption in those private markets. To the extent that federal grazing fees are based in part on private pasture and rangeland rental rates, major reductions in federal grazing authorizations can be expected to result in higher grazing fees due to federal/private forage market interdependence (Collins and Obermiller 1992).

(4) Since the permittee is a price-taker with no ability to pass fee increases along to the consumer, any fee increase must be absorbed by the federal rangeland rancher, representing a transfer of wealth from the private ranching sector as tenant to the Federal Government as proprietor and landlord. If the tenant, or permittee, is operating at the financial margin, markedly higher fee costs may lead either to closure of the operation or its sale to a larger operation. Industrial destabilization is possible.

(5) If federal grazing fees increase ceteris paribus, permit values and therefore ranch values will decline (Obermiller 1991b, Torell et al. 1992). As capital asset values decline, the ability to borrow against those assets decline. The expected result is asset devaluation in the Western federal rangeland ranching sector and reduced levels of private investment in and maintenance of range improvements, particularly on federally owned rangelands.[15]

(6) Those federal rangeland ranchers least able to afford markedly higher fee costs are likely to be the more highly leveraged sole proprietor operators. In American agriculture, such operators tend to be younger, and newer entrants to the industry. If this is true in the federal rangeland ranching industry (and it is not known whether or not this is true in that industry), the effects of higher fees will have demographic consequences for the structure of the Western ranching sector.

(7) Small to medium sized family ranch enterprises characterize that portion of the Western livestock industry holding federal grazing permits (Obermiller 1992c, Secretary of Agriculture and Secretary of the Interior 1992).[16] Smaller ranching operations do not enjoy economies of size and therefore are less able to absorb fee increases than are larger operations. This implies that as federal grazing fees increase, the average size of permittee enterprises will increase. This is not consistent with the purposes of the permitting system, which include preference for smaller family ranching operations.

(8) Family ranch operations tend to buy their ranch inputs in local markets, thus maintaining local community stability and stimulating local economic activity. For the above reasons, it can be expected that increases in federal grazing fees will lead to a decline in the number of smaller family ranches holding federal grazing permits. If the larger ranching operations that displace smaller operations do not make local purchases to the same extent as family ranches, rural communities that are service centers for the existing ranching sector will tend to be destabilized.

IN SEARCH OF A REASONABLE FEDERAL GRAZING FEE

Fees have been charged for domestic livestock grazing on federal rangelands and forestlands since 1906, the year after the Forest Reserves were transferred from the General Land Office in the Department of the Interior to the new Forest Service in the Department of Agriculture.[17] The statutory authority for grazing fees is the Taylor Grazing Act of June 28, 1934, although the Forest Service used the broad management powers given its Chief under the "Organic Act of 1897" to manage domestic livestock grazing on the National Forests as a rationale for setting grazing fees from 1906 through 1976.[18]

As has been noted, the Taylor Grazing Act authorized the Secretary of the Interior to charge "reasonable" fees for the granted access by private parties to federal rangeland forage. The TGA did not define the term "reasonable" however, and this has been one source of the continuing federal grazing fee controversy (Obermiller and McCarl 1982, Obermiller 1984). Reasonable to whom? In the broadest sense of the term, the federal grazing fee would have to be judged reasonable by each of the six broad interest groups identified by the Public Land Law Review Commission.

While the relationship between the level of the federal grazing fee and the economic stability of the individual ranching operation, local communities, and the Western livestock industry had been recognized since livestock grazing on federal rangelands was first regulated, making that relationship operational (in fee setting) was difficult. The first attempt at clarification occurred shortly after the Bureau of Land Management was created in July 1946 through the merger of the Grazing Service and the General Land Office in the Department of the Interior.

GRAZING FEES AND COMMUNITY STABILITY

The "Barrett Amendment" of August 6, 1947 (Public Law 376) extended the definition of "reasonableness" to include not only the permittee but also local federal rangeland dependent communities as the two parties to whom the fee should be fair: ". . . and in fixing the amount of such fees the Secretary of the Interior shall take into account the extent to which such districts yield public benefits over and above those accruing to the users of the forage resources for livestock purposes" (Sec. 1). This was the first Congressional effort to specify indicators of community stability as a public policy objective in federal grazing fee administration and related federal rangeland management.

The "Barrett Amendment" applied only to Section 3 grazing districts and Section 15 grazing leases administered by the newly created Bureau of Land Management—not to grazing lands administered by the Forest Service.[19] Recall that explicit statutory authority for Forest Service grazing fees did not yet exist. Through the 1950s and 1960s different grazing fees were charged by the two agencies. Under Use Book and subsequent Forest Service regulations, and consistent at least in part with the community stability objective, Forest Service grazing fees varied from National Forest to National Forest, from LU Project to LU Project, and after 1960 from National Grassland to National Grassland. BLM grazing fees were uniform westwide and generally were lower than National Forest, LU Project, and National Grassland fee levels.

MOVING TOWARD UNIFORMITY IN FEDERAL GRAZING FEES

Not until 1969, under pressure from both Congress and the Bureau of the Budget, did the two agencies adopt a uniform formula fee system.[20] The 1969 federal grazing fee formula had as its purpose charging a single grazing fee that would, on average, keep total grazing costs on BLM and National Forest rangelands equal to total grazing costs on comparable private rangelands, using an "animal unit month" (AUM) as the unit of measure. The 1969 uniform grazing fee for the 11 Western states consisted of a "base fee" of $1.23 per AUM multiplied by an index of annually updated estimates of average westwide private rangeland rental rates.

[Equation not reproducible in the RECORD.]

The 1969 formula fee system was contentious, in large part because one of the costs incurred by permittees—the amortized cost

of purchase of the permit—was omitted in the calculation of the $1.23 "base fee" in the 1969 (and thus in the current) grazing fee formula.[21] Congress subsequently imposed four moratoria on increases in the federal grazing fee from one year to the next, with the last of the four included in the text of the Federal Land Policy and Management Act (FLPMA) of October 21, 1976 Sec. 401.(a)). The omission of the "permit cost" in setting the fee formula was a major reason for those moratoria, because many Members believed that "permit cost" is a legitimate cost of livestock production on federal rangelands, and that its omission effectively caused permittees to "pay twice" for their permits.

FLPMA rescinded the "Barrett Amendment" and defined "reasonable" as a fee that was fair to both the user (the permittee) and the owner (the American taxpayer represented by the Federal Government) of federal rangeland livestock forage.

sec. 401. (a) The Secretary of Agriculture and the Secretary of the Interior shall jointly cause to be conducted a study to determine the value of grazing in the lands under their jurisdiction in the eleven Western States with a view to establishing a fee to be charged for domestic livestock grazing on such lands which is equitable to the United States and to the holders of grazing permits and leases on such lands. In making such a study, the Secretaries shall take into consideration the costs of production normally associated with domestic livestock grazing in the eleven Western states, differences in forage values, and such other factors as may related to the reasonableness of such feed. [emphasis mine]

What actually is fair to both the permittee and the American taxpayer is a matter of longstanding debate The debate centers on the meaning of a "fair market value" grazing fee.

Sec. 102. (a) the Congress declares that it is the policy of the United States that (9) the United States receive fair market value of the use of the federal lands and their resources unless otherwise provided for by statute. [emphasis mine]

In other words, Congress could, if it wished, eliminate grazing fees altogether.

In 1978, Congress decided to temporarily settle the grazing fee debate by passing a federal law, the Public Rangelands Improvement Act (PRIA) of October 25, 1978 that set the grazing fee based on a formula. Congress acted on the basis for a Report to Congress responding to the directive contained in Section 401(a) of FLPMA: Study of Fees for Grazing Livestock on Federal Lands (Secretary of the Interior and Secretary of Agriculture 1977). The report made no mention of the National Grasslands. Congress did not accept the recommendation of the Secretaries, which was to retain the 1969 formula fee system but add a 25 percent limit on year-to-year changes in fee levels. Instead, Congress adopted the recommendation of the "Technical Committee or Review Public Land Grazing Fees" appointed by the Secretaries (ibid., Appendix A and Federal Register, February 4, 1977, pp. 6980–6989).

THE PRIA AND NATIONAL GRASSLANDS FORMULA GRAZING FEE SYSTEMS

The PRIA formula fee system is a cost equalization formula patterned after the "Utah Model" (Roberts 1963). The "Utah Model" says simply that the total costs of using livestock forage should be the same, in the interests of both efficiency and equity, for permittees and nonpermittees. The "Utah Model" is implemented by first measuring, on average, the total (rent plus nonrent) per AUM private rangeland grazing cost. Then the nonfee portion of the total per AUM grazing costs for grazing on federal rangelands is measured, a again on average. The nonfee federal rangeland grazing cost is subtracted for the total private rangeland grazing cost. The residual is the "base" grazing fee for the year in which the measurements were taken: $1.23 per AUM in 1966 in the case of the PRIA formula fee system in the 11 Western states (and $1.33 per AUM in the "PRIA-like" formula used for the national Grasslands grazing fee in the nine Great Plains states).[22]

COST EQUALIZATION AS A FEDERAL GRAZING FEE POLICY STANDARD

the "Utah Model", but with permit cost omitted, was codified in section 6 of PRIA. The formula fee system detailed in that section was stated, by Congress, to simultaneously represent (1) the economic value of the forage to the permittee, and (2) the "fair market value" for federal rangeland grazing.

"For the grazing years 1979 through 1985, the Secretaries of Agriculture and Interior shall charge the fee for domestic livestock grazing on the public rangelands which Congress finds represents the economic value of the use of the land to the user, and under which Congress finds fair market value for public grazing equals the $1.23 base established by the 1966 Western Livestock Grazing Survey multiplied by the result of the Forage Value Index (computed annually from data supplied by the economic Research Service) added to the Combined Index (Beef Cattle price Index minus the price paid Index)and divided by 100: Provided, That the annual increase or decrease in such fee for any given year shall be limited to not more than plus of minus 25 per centum of the previous year's fee (43 USC 1905)."

The PRIA formula fee system is currently in effect under the auspices of Executive Order No. 12548 issues by president Reagan on February 14, 1986[23] and a similar formula remains in effect on the National Grasslands. Numerous bills and amendments have been offered in the House (and one in the Senate) over the past 18 months that would change the PRIA formula fee system, causing the amount of the federal grazing fee to increase. The most recent effort in the House (Congressman REGULA'S amendment to the FY 1993 Interior Appropriations bill) would, if enacted, lead to a temporary 33 percent increase in the PRIA grazing fee, from $1.92 per AUM in 1992 to $2.56 per AUM in 1993. As was true in 1990 and 1991, the proposed bills and amendments continue to omit the National Grasslands from the scope of the fee legislation.

THE STRUCTURE OF THE PRIA AND NATIONAL GRASSLANDS FORMULA FEE SYSTEMS

The PRIA formula bases grazing fees in the current year on a "cost equalization base fee" of $1.23 per AUM modified by indices reflecting the relative values of private grazing land rental rates, beef cattle prices, and costs of production in the immediately preceding year. This year's $1.92 PRIA formula grazing fee is calculated from last year's rental rates, costs, and returns together with a constant "base fee" of $1.23 per AUM.

As is easily seen, the two grazing fee formulas are conceptually the same, but Section 11 of PRIA exempted the National Grasslands from the provisions of the Act. Both fee formulas base grazing fees in the current year on 1966 base fees multiplied by index values in the immediately preceding year—meaning the 1992 per AUM grazing fees of $1.92 (PRIA) and $3.42 (National Grasslands) are based on the 1991 index values of comparable private grazing land rental rates, returns to Western ranching operations, and costs of production.

The $1.23 and $1.33 Per AUM "Base Fees:" The $1.23 and $1.33 per AUM values are referred to as the "base fees." They are supposed to represent the amounts that National Forest and Bureau of Land Management permittees, and the National Grassland permittees, respectively, would have to have been charged in 1966 so that, on average, the total costs per AUM of grazing livestock on public versus private rangelands would have been equal. The $1.23 PRIA base fee represents the weighted average of the grazing cost difference for cattle ($1.26 per AUM) versus sheep ($1.13 per AUM) grazing on federal versus private rangelands in the 11 Western states, and was derived from the results of the 1966 Western Livestock Grazing Survey of some 10,000 ranch operations and 500 financial institutions in the western United States (Table 1). While it has been understood that the $1.33 per AUM National Grasslands base fee was derived from the same survey, no records or reports are available to support or deny that claim.

The $1.23 and $1.33 per AUM "base fees" in the PRIA and National Grasslands formulas have as their conceptual basis the notion that a federal grazing fee will be equitable to the federal rangeland rancher, to ranchers who do not hold federal grazing permits, and to the American taxpayer if the fee, together with nonfee grazing costs on federal rangelands, equals the rent plus nonrent grazing costs on private rangelands. The underlying idea in this approach to fee setting is that both efficiency and equity in grazing markets will be realized if graziers in both markets, on average, encounter equal per AUM grazing costs.

This cost equalization approach rationalized the scope of the 1966 Western Livestock Grazing Survey, the design of its questionnaire, the process of the empirical analysis, and the reporting of survey results. Houseman et al. (1968) could find no statistical grounds upon which to argue for regionalized "base fees" due to the high degree of variability in allotment grazing costs within and among subregions of the West: hence a single westwide "base fee" of $1.23 per AUM was recommended for BLM and National Forest permittees. The goal was cost equality, on average, in grazing on private and public rangelands.

TABLE 1.—SUMMARY OF ADJUSTED COMBINED PUBLIC LAND (NATIONAL FOREST AND BUREAU OF LAND MANAGEMENT) AND PRIVATE LAND GRAZING COSTS IN THE 11 WESTERN STATES IN 1966 DOLLARS PER AUM

Cost items	Cattle		Sheep	
	Combined public costs	Private costs	Combined public costs	Private costs
Lost animals	.60	.37	.70	.65
Association fee	.08	.....	.04	.....
Veterinary	.11	.13	.11	.11
Moving livestock to and from	.24	.25	.42	.38
Herding	.46	.19	1.33	1.16
Salt and feed	.56	.83	.55	.45
Travel to and from	.32	.25	.49	.43
Water	.08	.06	.15	.16
Horse	.16	.10	.16	.07
Fence maintenance	.24	.25	.09	.15
Water maintenance	.19	.15	.11	.09
Development depreciation	.11	.03	.09	.02
Other costs	.13	.14	.29	.22
Private lease rate	.....	1.79	.....	1.77
Total operating costs[1]	3.28	4.54	4.53	5.66
Difference between private/public		1.26		1.13
Combined cattle and sheep		[2]1.23		

[1] Excludes the amount of the grazing fee charged in 1966.

[2] Weighted by 80 percent cattle and 20 percent sheep AUMs. All column and row headings are as reported to Congress in 1969. "Public costs" as used here refer to grazing costs on public lands, and "private costs" refer to grazing costs on privately owned rangelands.

Indices Used to Modify the "Base Fees:" Since prices and market conditions change over time, the $1.23 and $1.33 per AUM "base fees" would have to be updated in some way to account for those changes. In the PRIA formula [Equation 2] and its National Grasslands equivalent [Equation 4], the $1.23 and $1.23 per AUM "base fees" were multiplied by three indices to account for such changes over time.

The logic of the formula fee systems is that the "base fees" are one of two long-run fair market value components. The second of these long-run components is the "Forage Value Index" or FVI. These are indices of what are supposed to be private grazing land rental rates in 11 Western states (PRIA formula) and in the six remaining Western federal rangeland Great Plains states (National Grasslands formula) using 1966 as the base year. Both versions or the index are based on an annual survey conducted in the month of June (recently July).

The FVI is derived from the results of a "July Cattle Survey" (JCS), formerly the "June Enumerative Survey" (JES), conducted by the National Agricultural Statistical Service (NASS) and is weighted by the number of farm units with cattle in each of (1) the 11 Western states for the PRIA formula and (2) the six remaining Great Plains states for the National Grasslands formula (Secretary of Agriculture and Secretary of the Interior 1986, p. 23). This results in an overstatement of the prevailing private grazing land rental rate relative to a weighting based on the number of federal AUMs authorized for domestic livestock grazing in each state (ibid, pp. 23–24).[24]

The other two PRIA formula indices were intended, by the Government economists who developed the PRIA formula, to reflect ". . . short-run instabilities that result during periods of demand, supply, and prices disequilibrium" not otherwise accounted for in the longer term forage value index" (Federal Register, February 4, 1977, p. 6988). The General Accounting Office (Rangeland Management: Current Formula Keeps Grazing Fees Low, June 1991) and others have interpreted these latter two indices as measures of "profitability" or of the federal rangeland rancher's "ability to pay" for federal forage (ibid., p. 17). That was not the original intent of the creators of the PRIA fee formula who argued, to the contrary, that the longer term forage value index fails to capture short term fluctuations in market conditions—and since the grazing fee is an annually updated charge, the short term is as important a determinant of forage value as is the long term.

These remaining two indices reflect annual changes in livestock market demand and supply conditions. The BPI is a beef price index (with 1966 as the base year) reflecting the average weighted selling price of cows, feeders, and fat cattle (but not calves under 500 pounds or sheep) in the 11 Western states (PRIA formula) and in the remaining six Great Plains states (National Grasslands formula). The BPI is derived from published NASS data and is weighted by the total liveweight of cattle marketed in each state regardless of their state of origin (Secretary of Agriculture and Secretary of the Interior 1986, p. 25). As with the FVI, weighting based on authorized federal AUMs in each state would reduce the prices received value;[25] and while it is not known, it is probable that weighting by state of origin would lead to a further reduction in the prices received value.

The PPI is a prices paid index (also with 1966 as the base year) computed from national beef production input costs, modified to reflect costs of production for cow-calf enterprises in the 16 Western public rangeland states (excluding Texas). This index, which excludes production inputs of farm origin such as hay and feeder livestock, has been criticized on the grounds that "The exclusion of these factors gives greater weight to components of livestock production highly affected by market changes and inflation, such as fuel costs" (ibid, p.27).

HOW WELL HAVE THE PRIA AND NATIONAL GRASSLANDS FEE FORMULAS WORKED?

Congress was not convinced that the PRIA formula fee system would work in tracking changes in the economic use value (to the permittee) and the fair market value (to the American taxpayer) of federal rangeland livestock forage. Consequently, PRIA contained a provision (Section 12) requiring the Secretaries of Agriculture and the Interior to evaluate the fee formula and to report their evaluation back to Congress by the end of 1985.[26] Since the National Grasslands formula was conceptually the same as the PRIA formula, the Forest Service intended to also evaluate the National Grasslands fee formula. Events precluded such an evaluation however.

The two agencies began their evaluation of the PRIA formula in 1980. Both the base fee and the three indices were evaluated. Other ways of establishing grazing fees were reviewed as well, and were subsequently reported to Congress (Secretary of Agriculture and Secretary of the Interior 1986 and 1992; for additional fee alternatives not evaluated by the agencies see Obermiller and Bartlett 1991). The 1992 Update of the 1986 report places less reliance on the results of the agencies' 1981–1985 study, and more reliance on technical updates of the original 1966 data base.

Substituting Private Rental Rates for the Base Fee: Soon after the required review and evaluation directed in Section 12 of PRIA began, it became clear that in evaluating the formula fee system a survey of costs and returns to both federal and private rangeland grazing operations—such as had been conducted in 1966 resulting in the $1.23 and ostensibly the $1.33 per AUM base fees—would not be repeated.[27] Rather, a "mass appraisal" would be done of rents paid for private pastures and rangelands in the Western states. The appraisal study results were published in 1984. Six "Pricing Areas" were established, and for mature cattle and horses a different base would be used in each of these areas. The appraised base values were $9.50 in Pricing Area 1, $7.10 in Pricing Area 2, $7.60 in Pricing Area 3, $5.90 in Pricing Area 4, $5.20 in Pricing Area 5, and $6.40 in Pricing Area 6 (see Figure 5).

Pricing area	Private land lease rate	Corresponding "appraisal value"	Advance payment grazing fee
Mature Cattle and horses (over 18 months of age):			
1	$10.00	$9.50	$8.55
2	7.50	7.10	6.39
3	8.00	7.60	6.84
4	6.25	5.90	5.31
5	5.50	5.20	4.68
6	6.75	6.40	5.76
Yearling cattle (under 18 months of age):			
1	7.50	7.10	6.39
2	6.75	6.40	5.76
3	6.25	5.90	5.31
4	5.70	5.40	4.86
5	5.50	5.20	4.68
6	4.75	4.50	4.05
Sheep: Westwide	1.10	1.05	.95

Source: 1986 Report to Congress, pp. 13 and 15.

When the appraisal results showed that private lands were renting at higher rates than the PRIA formula fee, it seemed inevitable that pressures to adjust the $1.23 base fee (and by extrapolation the $1.33 per AUM National Grasslands base fee) upward would materialize. That is exactly what has happened. While their formal Report Congress (*Grazing Fee Reveiw and Evaluation* 1986) contained no explicit recommendations, all but one of the reported alternatives to the PRIA formula adjusted the base fee upward using the appraisal results. The remaining alternative adjusted the $1.23 base fee upward based on changes in price index values.

In 1991, these "mass appraisal" values were incorporated in proposed bills (H.R. 481 and H.R. 944), and in approved amendments to the U.S. House of Representatives Interior Appropriations (Synar Amendment) and House BLM Reauthorization (Regula Amendment) bills. All would have increased the federal grazing fee by a minimum of 250 present. These appraisal values also are the basis for the recent fee increase proposed by Congressman Regula, representing the first year increment to the fee as proposed in his amendment to the FY 1992 House BLM Reauthorization bill. As will be discussed, these "mass appraisal" values are not comparable to the "cost equalization" $1.23 and $1.33 AUM "base fees" obtained in the 1966 Webster Livestock Industry Survey. If used as a basis for setting federal grazing fees, the appraisal values would cause the costs of grazing livestock on federal rangelands to exceed the costs of grazing livestock on the private rangelands.[28]

Recommended Changes in Indices. The private pasture rental rate (FVI), beef cattle prices (BPI), and costs of beef cattle production (PPI) indices also were evaluated by the agencies as reported to Congress in 1986 and 1992. Each was found to have problems (Nelson and Garratt 1984, Thorpe and Holden 1984), but in their 1986 Report to Congress the Secretaries recommended changing only the PPI index. Interestingly, the PPI had been primarily responsible for the relatively low level of the PRIA formula fee between 1979 and 1985. The recommended changes would have caused the PPI to increase less rapidly in the furture, *ceteris paribus* meaning that upward pressure on the fee would result. In retrospect, even if the base fee were left a $1.23 per AUM, the new cost index would have caused the average value of the grazing fee to double over the 1979–1985 time period. This was not recognized by the Secretaries in their 1986 Report to Congress, but was acknowledged in the April 30, 1992 *Update* (p. 28) In their 1992 report the Secretaries continue to recommend changes in the structure of the prices paid index.

In the 1992 *Update* changes in the prices received or BPI index were discussed (pp. 26–28), These were modifications to (1) include weaner calves and sheep, the primary livestock products in federal land ranching, both of which are excluded from the current BPI; (2) exclude fat cattle from the BPI, since fat cattle are not produced on federal rangelands; (3) update the base period for the index to include market conditions in the 1990's; and (4) weight the annual BPI index

by the number of federal AUMs in each of the 16 Western states. While none of these changes were recommended, if Congress does modify the PRIA formula the changes in BPI referenced here are worth further consideration.

The Forage Value Index (FVI) has been a source of controvery for a number of reasons. In obtaining survey data for the index, no distinction is made between short-term and long-term private sector grazing transactions meaning that the values obtained do not necessarily reflect either current or normal market conditions. Second, no information is collected on services provided by the landlord, so the resulting private rate of necessity exceeds the federal forage value by the amount of the value of the average bundle of services provided by the lessor. Third, respondents to the reporter survey do not have to be involved in actual grazing lease transactions, implying that the private rental values used in the FVI are not based on real market transactions. Fourth, the information obtained in the reporter survey is weighted by number of farm units per state rather than by number of federal rangeland AUMs per state causing the index to reflect the geographic concentration of livestock production (tilted toward the Great Plains and California) rather than the geographic concentration of federal rangeland grazing (tilted toward the Interior West). In the 1992 Update it is implied that the fourth concern probably should be addressed (pp. 25–26), the second and third concerns are dismissed, and the first concern is not mentioned. Again, if Congress does modify PRIA, the problems with the index of private pasture rental rates are worth further consideration.

POINTS OF CONTENTION IN THE CURRENT FEDERAL RANGELAND POLICY DEBATE

The strengths of the interests of the publics participating in the federal grazing fee/rangeland use policy debate are reflected in the unfortunate polarization of their respective positions. Generalization in policy analysis is dangerous. However, those close to the federal grazing fee debate may agree that there are two groups voicing common arguments in the current federal grazing fee/rangeland use policy debate (see Quigley and Bartlett 1990, and Godfrey and Pope 1990).

Advocates of increased Federal grazing fees

There are those who seek to increase the level of the federal grazing fee. Some argue simply that the fee needs to be raised for fiscal reasons, while others argue that the fee should be raised for land use purposes. Other than the "PRIA with Technical Modifications" base fee of $2.93 per AUM as previously discussed (footnote 28), most who argue for fee increases rely on the "mass appraisal" values (detailed in Figure 5) as an alternative to the "cost equalization" base fees of $1.23 and $1.33 per AUM derived from the 1966 Western Livestock Grazing Survey (see Table 1).

Proponents of increases in the federal grazing fee generally argue that present fee levels (1) are unfair to nonpermittees because the "low" grazing fee puts the federal land rancher in a position of competitive advantage relative to the private land rancher; (2) result in a taxpayer subsidy to a small and economically insignificant number of permittees by pricing federal rangeland forage below its "fair market value" thereby failing to cover the government's costs of administering the federal rangeland livestock grazing programs; and (3) result in overgrazing of the federal rangeland forage resource, particularly in areas less suitable for livestock grazing.

Various environmental groups and some Congressmen from the midwest, east, and southeast support efforts to increase federal grazing fees. The views of those who would like to see grazing fees raised have been and in all probability will continue to be incorporated in proposed bills introduced in both Chambers, and increasingly in the form of amendments to Interior Appropriations and BLM Reauthorization bills.[29]

Some of those who hold to this view would use increases in the federal grazing fee as a means of reducing or eliminating livestock grazing as an authorized federal rangeland use. These publics argue that the federal grazing fee should be increased to a level that causes the grazing permit to have no value, which from the standpoint of economics implies that the permittee would no longer derive net benefit from the use of the permit in and of itself—and thus would be willing to relinquish the grazing use "privilege" previously granted by the Federal Government as sovereign to the customary user or "permittee."[30]

Advocates of the status quo

Others seek to leave the existing PRIA fee formula in place on the grounds that there is no evidence to support changing it. This group contends that the current fee system is neither unfair nor does it constitute a subsidy. Some of the advocates of the status quo believe that efforts to modify the existing PRIA fee formula are intended to reduce or in the extreme eliminate domestic livestock grazing as a use of the Western federal rangelands.

All of those holding to this alternative view believe that domestic livestock grazing should continue to be an authorized use of the Western federal rangelands, and that the current PRIA fee formula promotes ranch, community, and industry stability. Many of these publics emphasize the value and contribution of the federal rangeland ranching industry to local and regional economies. In general, supporters of the PRIA fee formula include the Western livestock industry, most of the Western Congressional delegations, Western local and state governments, and rural community business interests.

Key elements in the debate

With regard to the federal grazing fee per se, the points of debate cener around (1) the relevance and validity of the "grazing rental appraisal estimates of market value of forage" obtained in the 1983 "Appraisal Study" conducted by the Forest Service and the Bureau of Land Management as detailed in Fair Market Rental Value of Grazing on Public Lands: Volumes 1 and 2) vis-a-vis the "base fees" of $1.23 per AUM on BLM and National Forest allotments and $1.33 per AUM on National Grasslands in the Great Plains derived from the 1966 Western Livestock Grazing Survey (summarized in the Study of Fees for Grazing Livestock on Federal Lands (1977, Appendix A)); (2) the "subsidization" allegation; and (3) changes in the conditions of the Western federal rangelands during the life span of the PRIA grazing fee formula. The first two of these points are addressed below.

THE PROBLEM WITH THE APPRAISAL VALUES

All of the recent Congressional proposals to change the PRIA formula fee system have one thing in common: all would replace the $1.23 "base fee" in the PRIA formula with some version of the "Appraisal Values" reported by the Forest Service and the Bureau of Land Management in 1984 (Tittman and Brownell 1984).[31] In these proposals, the various indices used to modify the "base fee" are not the issue—the "base fee" is the issue.

The empirical, statistical, and theoretical mistakes made in the course of the appraisal study are detailed in Research Report 104, An Evaluation of the Forest Service and Bureau of Land Management Grazing Appraisal Report, published by Utah State University (Nielsen et al. 1985).[32]

These inadequacies are elaborated by many whose testimonies are summarized in the earlier 1987, 1989, and 1991 Hearing Records of the House Subcommittee on National Parks and Public Lands. The testimonies include formal distancing by the executives of the Departments of Agriculture and the Interior, and hence the Administration, from the results of the Appraisal Study conducted by their own federal land management agencies.[33]

In their 1992 Update (pp. 2–3), the Secretaries acknowledged the criticisms of the "mass appraisal" study: the values of services provided by landlords were not collected, nor estimated; the statistical analysis of the mass appraisal results was inappropriate; the five percent downward adjustment of private grazing land rental rates by the appraisers to account for differences in the terms and conditions of private versus federal grazing leases was arbitrary; the size of the subsample used to update the 1984 results to 1991 values was too small and not representative of the 1984 population; etc.

The primary problem with the "mass appraisal" is that the forage values obtained from it are theoretically and conceptually different than the "base fees" derived from the 1966 Western Livestock Grazing Survey. Congress directed the Secretaries to evaluate the PRIA formula, including the "base fees." The Secretaries did not evaluate the $1.23 and $1.33 per AUM base fees at all. Instead, different values obtained using a different methodology were substituted for the $1.23 and $1.33 per AUM base fees. Regardless of their statistical inaccuracy, the appraisal values did not constitute the directed evaluation of the base fees in the PRIA formula. This is the basis for the external criticism of the appraisal study (Rostvold and Dudley 1992).[34]

The fact is that the appraisers did not appraise the subject properties (the federal grazing permits and leases). No information was collected on the relevant terms and conditions of the private grazing leases that were appraised. No effort was made in the appraisal process to control for differences in accessibility, forage quality, improvements, or other factors distinguishing the federal rangelands allotments from private rangelands and pastures. In this regard the appraisal process violated Section 401(a) of FLPMA (see page 15). The consequence was, and is, average "Pricing Area Appraisal Values" that (1) are not comparable to federal permit forage values, and (2) represent an unknown bundle of food (livestock forage) and associated services provided by the landlord. Following all of these errors in judgement, the statistical analysis was flawed. Some of the problems with the appraisal process and the resulting "Appraisal Values" are elaborated below.

The appraisal approach to resource valuation given market interdependence

Appraisals are but one of several means of discovering value. The "comparable market" approach to appraising,[35] ostensibly used in the conduct of the PRIA formula fee evaluation, must pass two minimal tests. First, and least important although clearly relevant, the appraiser must be able to correlate and control for qualitative differences in the subject property vis-a-vis comparable properties

having observed market values. Second, and fundamentally important, the observed values of comparable properties must be unaffected by the value, or use, of the subject property.

Expanding on the second point—it has been conjectured for a very long time that private grazing land markets in the Western United States are strongly influenced by pricing (fee) and land use (stocking level) devisions on federal rangelands. Marion Clawson, a former Director of the Bureau of Land Management, put it as follows.

"If the area and the importance of federal rangelands in a locality or district were so great as to have influenced materially the whole structure of values for private lands of all types, then a comparison between costs on private land and values of federal land, even for physically similar areas, might be misleading" (1951, p. 6).

Only recently has the issue of market interdependence been subject to empirical test (Collins and Obermiller 1992). Statistically significant interdependence between changes in federal market forage allocations to livestock and private market forage prices has been detected.[36]

Restating Clawson's conceptual point, it is incorrect to assume that the private rangeland forage market in the Western United States is either competitive or comparable to the federal land forage market, and therefore observed price in the private market cannot be assumed to reflect value in the federal market (Obermiller 1984).[37] Yet, for inexplicable reasons, such an assumption was made and the appraisal process proceeded to its controversial conclusions.[38]

Qualitative differences in Federal and private forage markets

The qualitative differences between Western federal and private rangelands and the cost implications for their use by domestic livestock are great. This further reduces the utility of (further subordinates) the "comparable market" approach to valuation. While the courts require that qualitative dissimilarities be minimized, and that due allowance be made for remaining dissimilarities when establishing the subject property's value, neither requirement was met in the 1984 Appraisal Report as incorporated in the 1986 Report to Congress and in the 1992 Update.[39]

With the exception of a very few subleases, the appraisers did not actually inspect or verify the conditions on the subject properties themselves—the federal rangelands—even though the purpose of their exercise was to establish the value of livestock forage on those federal rangelands. For the private leases that were observed, little or no attempt was made to gather information on the actual value (cost) of services provided by landlords and lessees. This implies that associated use costs on private and federal rangelands are similar—an entirely erroneous assumption.[40]

Based on the results of the 1966 Western Livestock Grazing Survey, the nonfee costs of grazing cattle on federal rangelands were $0.53 per AUM higher than the nonrent costs on private rangelands.[41] By 1983, the base year for the Appraisal Report, adjustments for inflation brought this cost differential to $1.60 per AUM. Further, in 1982 the BLM changed its rangeland improvement maintenance policy, adding $0.60 per AUM to permittee improvement costs westwide (Obermiller 1992b). This brought the cost differential for federal grazing up to $2.20 per AUM in 1983, assuming no additional changes in permittee costs.[42]

Yet the appraisers did not collect information on nonfee/nonrent cost differences. The appraisers did realize, after the fact, that nonfee cost differentials should be acknowledged. The approach they used to account for the cost dissimilarities, since they had gathered no nonfee cost information for either federal or private leases, was to "restore" cost comparability by adjusting average private grazing land lease rates downward by five percent. The rationale for that adjustment was the "informed judgment" of the appraisers (Tittman and Brownell 1984, p. 136). The five percent adjustment amounts to $0.38 per AUM in 1983 dollars. Consequently, if the appraisal results are accurate it must be assumed that it was relatively less expensive ($1.82 per AUM cheaper in 1983 prices) to use federal rangelands for livestock grazing in 1983 versus 1966.

"It is the opinion of the appraisers that a slight deficiency exists in the public permit as it compares to the typical private lease. This deficiency will be expressed as a five percent downward adjustment (entitled conditions of use) of the private land lease rate, which is derived from the private market, resulting in an opinion of fair market value for grazing use on public rangelands" (Appraisal Report Estimating Fair Market Rental Value of Grazing on Public Lands: Volume I, p. 136. [emphasis mine].)

This assumption fails the test for control of qualitative dissimilarities. Permittee costs have increased, not decreased, relative to 1966. The Extension Service survey results (see footnote 34) reveal that federal rangeland forage utilization costs are as much as $8.14 per AUM higher than equivalent private forage costs. The reasons for the higher costs faced by permittees are well known and thoroughly documented. They include higher death loss of livestock, greater labor requirements, and higher management costs incurred to meet multiple use rangeland management goals. These federal rangeland nonfee costs increased by 200-450 percent, varying across regions in the Western United States, between 1966 and 1983—outstripping the general rate of price inflation used above in updating the 1966 cost differential to $2.20 per AUM in 1983 prices.

In summary, we are dealing here with qualitatively different goods and services (forage and associated services) exchanged in interdependent markets. The validity of the appraisal results is questioned because of failure to control for these qualitative differences. Even if proper control had been exercised, and it was not, it would be difficult to know what the private lease values really represent. One thing would be known for certain: private lease rates cannot reflect federal forage values if the federal and private markets are interdependent—a reality acknowledged neither in the 1984 Appraisal Report nor in the 1986 Report to Congress or its 1992 Update.

THE FALLACIES OF THE SUBSIDIZATION ARGUMENT

Since federal grazing fees are set by formula independently of stocking rates, and since stocking rates are regulated in part to protect rangeland conditions, there really can be no evidence to support the assertion that "low" federal grazing fees promote overgrazing. Nonetheless, the subsidization assertion frequently is made, and those making it point to the following as indicators of a subsidy in the federal grazing fee: (1) subleasing of federal grazing allotments at rates in excess of the grazing fee, (2) lower forage use costs on federal permits relative to private pastures and rangelands, (3) higher grazing fees on state grazing lands, (4) costs of BLM and Forest Service grazing program administration in excess of the federal grazing fee and (5) the existence of permit value due to capitalization of rent. These five points are addressed below.

Is subleasing as significant problem?

Subleasing of federal grazing permits would be expected under a single uniform fee system, given the heterogeneity of the various types of federal rangelands.[43] The key issue is how extensive is the illegal subleasing of federal grazing permits?

There are not very many documented examples of illegal subleasing. The Appraisal Study concluded that there were 30,286 federal grazing permits or leases in the Western United States in 1983. Of these, 90 were illegally subleased in that year. That is equal to 0.3 percent (one out of 333) of the authorized grazing permits and leases during the last year of the appraisal survey. Four times as many permits and leases (411) were vacant and abandoned in the same year; and the level of voluntary nonuse (authorized use minus actual use) amounted to over three million AUMs.

The 1983 PRIA fee rate was $1.40 per AUM for each of the 30,286 permits and leases. Some were in good condition, some poor. Some were easily accessible, others remote. Some had water on site, others didn't. It would seem obvious that at $1.40 per AUM some of these 30,286 permits would be underpriced, others overpriced. On average, the numbers (90 subleased versus 411 abandoned and over 3,000,000 AUMs of voluntary nonuse) would imply that at $1.40 per AUM the federal rangeland grazing resource was on average not underpriced relative to its underlying grazing value in 1983.

Yet some proponents of federal grazing fee increases focus their attention on the minuscule number (90) of apparently underpriced illegally subleased permits, and make an intuitive leap to the population (30,286) as a whole. As shown, the sublease data simply do not support the argument that permits are typically underpriced.

Don't permittees have lower total grazing costs than nonpermittees?

Taking all cash and noncash grazing costs into consideration, permittees pay as much and sometimes more for livestock forage on federal rangelands than on private rangelands and pastures. The reasons for these higher grazing costs are that, on federal rangelands, ranchers face higher death loss, greater labor requirements, and higher management costs—and furthermore animal performance often is poorer.

These differences in federal and private forage use costs are extensively documented (Bartlett et al. 1984, Lambert and Obermiller 1983, Nielsen 1982, Nielsen and Workman 1971, Obermiller and Lambert 1984, Obermiller 1992b, Roberts 1967, Torell et al. 1986) and were referenced by the Secretaries in their 1986 Report to Congress and in the 1992 Update. The cost differentials were measured in the 1966 Western Livestock Grazing Survey (Houseman et al. 1968), and are the reason why the $1.23 and $1.33 per AUM "base fees" were less than the prevailing private rangeland rental rate ($3.65 per AUM) in 1966.[44]

Professor Darwin Nielsen of Utah State University (where the cost equalization fee concept originated) has recently prepared a price updated version of the private/federal forage use cost differentials (Nielsen 1991). His update assumes no structural change in federal rangeland grazing versus private rangeland grazing, and results in the grazing

costs summarized in Table 2. Quite recently, Obermiller (1992b) updated grazing cost data obtained in an Eastern Oregon survey in 1982. These Eastern Oregon data do reflect structural changes in federal rangeland grazing relative to private rangeland grazing since 1966. The results of the Eastern Oregon grazing cost update are summarized in Table 3.

The differences between the updates of the 1966 and the 1982 grazing cost data are summarized in Table 4. The Eastern Oregon grazing cost update suggests that structural changes in the federal rangeland sector have caused permittees' grazing costs to increase by 16 percent relative to private sector grazing costs over the past 26 years. Note that the 1982 updated data for Eastern Oregon show total grazing costs on private rangelands to be $15.03 per AUM, and total grazing costs on all federal grazing allotments combined to be $16.83 per AUM. The updated data are for the year 1990. In 1990 the federal grazing fee was $1.81 per AUM. Subtracting the grazing fee from the total grazing costs on combined federal allotments results in a nonfee cost of $15.02 per AUM versus a private grazing cost of $15.03 per AUM. These results suggest that, at least in Eastern Oregon, private grazing costs are less than federal grazing costs by the amount of the grazing fee.

TABLE 2.—GRAZING COSTS PER AUM ON PUBLIC VERSUS PRIVATE RANGELANDS: 1966 COSTS PRICE UPDATED TO 1990

Operation	Federal grazing permits	Private leases
Lost animals	$1.82	$1.12
Association fees	.27	0
Veterinary	.45	.53
Moving livestock to and from	1.11	1.16
Herding within operation	1.86	.77
Salt and feed	2.32	3.09
Travel to and from operation	1.49	1.19
Water (production items)	.27	.20
Horse	.50	.31
Fence maintenance	.89	.92
Water maintenance	.69	.55
Development depreciation	.37	.10
Other	.44	.47
Total	12.48	10.41
Federal grazing fee (1990)	1.81	0
Private lease rate (excludes any services provided by lessor) (1990)	0	4.35
Total operating costs/AUM	14.29	14.79

Source: Nielsen (1991).

TABLE 3.—PER AUM GRAZING COSTS AND COSTS BY ACTIVITY IN 1990 DOLLARS FOR GRAZING ON COMBINED BUREAU OF LAND MANAGEMENT, FOREST SERVICE, COMBINED FEDERAL, AND PRIVATELY LEASED LANDS IN EASTERN OREGON

Activity [1]	Group							
	Bureau of Land Management n=78		Forest Service (n=64)		Combined Federal (n=142)		Private leases (n=23)	
	Cost (dollar/AUM)	Percent of total cost	Cost (dollar/AUM)	Percent of total cost	Cost (dollar/AUM)	Percent of total cost	Cost (dollar/AUM)	Percent of total cost
Turnout	1.25	8.3	1.20	6.3	1.23	7.3	1.43	9.5
Gathering and take-off	2.16	14.3	3.92	20.7	2.95	17.5	1.56	10.4
Management	2.92	19.4	5.62	29.6	4.14	24.6	1.54	10.2
Maintenance	2.09	13.9	1.97	10.4	2.04	12.1	.69	4.6
Meetings/Paperwork	.31	2.1	.22	1.2	.27	1.6	.03	.02
Salt, feed, med.	.41	2.7	.34	1.8	.39	2.3	.38	2.5
Death loss	3.13	20.8	2.42	12.8	2.81	16.7	1.58	10.5
Other	.90	6.0	.67	3.5	.80	4.8	.06	0.3
Miscellaneous	.01	0.1	.02	0.1	.01	0.1	.....	.....
Association fees	.14	.09	.79	4.2	.43	2.6	.....	.....
License/lease	1.75	11.6	1.80	9.5	1.77	10.5	7.77	51.7
Total cost	15.07	100.0	18.97	100.0	16.83	100.0	15.03	100.0

[1] All activities are defined and described in Lambert and Obermiller (1983, appendix II, part II).

TABLE 4.—DIFFERENCES IN MAJOR CATEGORIES OF GRAZING COSTS PER AUM IN 1990 DOLLARS FOR FEDERAL GRAZING PERMITS AND PRIVATE GRAZING LEASES FROM UPDATED 1966 WESTWIDE AND 1982 EASTERN OREGON DATA BASES

Cost category	Cost per AUM in 1990 dollars					
	Federal grazing permits			Private grazing leases		
	1966 data	1982 data	1982 as percent of 1966	1966 data	1982 data	1982 as percent of 1966
Turn-out [1]	0.29	1.23	424	0.48	1.43	298
Gathering/take-off [1]	.82	2.95	360	.64	1.56	244
Routine management	2.36	4.14	175	1.08	1.54	143
Maintenance	1.58	2.04	129	1.47	.69	47
Salt, feeding, and vet	2.77	.39	14	3.62	.38	10
Death loss	1.82	2.81	154	1.12	1.58	141
Fees and rents	2.08	2.20	106	4.35	7.77	179
Other	1.08	1.08	100	.67	.06	9
Total cost	14.29	16.83	118	14.79	15.03	102

[1] "Gathering/take-off" costs and "turn-out" costs are combined in Table 2 and expressed as "moving livestock to and from." They are separated in table 4 based on the proportional contributions of the two activities observed in the Eastern Oregon data set.

On average, permittees encounter higher grazing costs than private land ranchers.

Why are State grazing fees higher than the Federal grazing fee?

This answer to this question is similar to explaining why a furnished home rents for more than an unfurnished apartment, all other things equal. First, some of the Western states claimed the more productive lands from the public domain as a condition of their statehood, while others actively exchanged poorer state lands for more productive public domain rangelands during active land exchange intervals in the 1930s and 1970s. The BLM got what nobody else wanted. Second, state rangelands on which livestock are grazed in the West are not managed for multiple uses as are BLM and Forest Service lands resulting in less harassment incurred by operators who graze livestock on state lands. Third, not a single state requires the grazier to control commensurate base property.

The first point means that many of the state grazing lands are of higher quality, translating to more AUMs per acre. In turn, this means that animals perform better, hence gross ranch revenues per state land AUM are higher, and therefore demand—assuming the state land forage "market" is relevant which it probably is since commensurability is not required—is greater for state grazing lands. Thus, state land grazing fees would be expected to be higher than federal grazing fees.

The second point means that the grazing costs faced by the state grazing lands rancher are lower than the grazing costs faced by the federal rangelands rancher. Multiple use management means imposed restrictions on any one use—including domestic livestock grazing—for the benefit of other authorized uses and users. Management restrictions mean management costs. Management costs are a component of grazing costs. Consequently, grazing costs are higher on federal rangelands relative to state grazing lands. Conversely, it is less expensive to graze livestock on state lands. Since it is less expensive (higher quality aside), ranchers can afford to pay more for state grazing land AUMs—and they do pay more.

The third point means that the user of state grazing lands has little or no vested interest in the state lands from an ownership perspective, since the state lands are not attached via a lease contract to base property. The state land grazing permittee does, however, have proprietary interest in range improvements benefiting the livestock use. As a consequence, fewer rancher-financed improvements benefiting non-livestock uses may be made on state grazing lands, reducing the maintenance cost component of the total grazing cost. In two out of three cases,

when range improvements are made by the rancher on state grazing lands (often with cost-sharing by the state), the rancher is granted the ownership right to them, and is compensated if the state grazing lease is not renewed. From the state's perspective, range improvements financed by the user are encouraged, since if the improvements lead to more forage and/or a longer grazing season, more fee receipts are available to the Common School Fund or other purposes. Again from the state's perspectives, it is appropriate to delegate more management responsibility to the user, the state land permittee, since by doing so the costs of administering the state land grazing program are reduced, and net livestock grazing revenues accruing to the state are increased.

Do grazing fees recover grazing program administration costs?

Recently, much concern has been expressed about "cost recovery" as a guideline for setting federal grazing fees. The issue is complex, and is treated in more detail in the Appendix to this testimony. The elements of the debate are summarized below.

In the General Accounting Office report, *Rangeland Management: Current Formula Keeps Grazing Fees Low* (1991), the following statements were made:

"The soundness of the formula must be viewed in the context of the primary objective to be achieved . . . it does not achieve an objective of recovering reasonable program costs because it does not produce a fee that covers the government's cost to manage the grazing program (ibid., p. 1); the loss incurred by the U.S. Treasury for conducting the federal grazing program is . . . dramatic" (ibid., p. 23).

The GAO based its conclusions on data provided by the Forest Service suggesting that in 1990 the USDA's grazing program administration cost was $3.86 per AUM (versus a 1990 PRIA grazing fee of $1.81 per AUM and a National Grasslands grazing fee of $2.86 per AUM). In 1990, the Bureau of Land Management estimated its grazing program administration cost to be $1.61 per AUM.

The reason for the wide disparity between the two agencies estimates of administrative costs is that, prior to the publication of the 1992 Update, the Forest Service and the BLM used different procedures in calculating administrative costs. The approach used by the BLM was to measure all administrative costs related to the current year grazing program (not the capital account investment cost represented by the range improvement program since this is not an annual livestock forage management cost), subtract the value of the vegetation management benefits accomplished through regulated or prescribed livestock grazing (which by law the agency is required to provide whether or not there is any livestock grazing on BLM lands), and divide the residual by the number of authorized livestock AUMs. Their result was an estimated net current account grazing program administration cost of $1.61 per AUM in 1990.

The approach used by the Forest Service was to measure all management and improvement costs associated with the range program in the Washington D.C. office and all field offices. The Forest Service assumed the field range staffs would be eliminated if grazing on National Forests and National Grasslands were to cease. No allowance was made for vegetation management benefits attributable to livestock grazing. Longer term capital costs associated with range improvements, regardless of the use or distribution of uses benefitting from those improvements, were included by the Forest Service in estimating its administrative costs. The result was the sum of field range program salaries and wages, associated requisitions costs, and all improvement expenditures divided by the number of authorized livestock AUMs: $3.86 per AUM in 1990.

While cost recovery is a legitimate federal resource pricing objective, the issue here is how to properly measure and account for net grazing program administration costs. Using the BLM approach, the Federal Government as proprietor was receiving a net return on the livestock use of its public domain grazing lands in 1990. Using the Forest Service approach it was not receiving a net return on the livestock use of its reserved National Forests and acquired National Grasslands. Again, as in virtually all aspects of the federal grazing fee/rangeland use debate, the cost recovery issue is much more complex than at first glance.

The difference between the two accounting approaches was resolved, in part, in the 1992 Update (pp. 5–6 and Figures 1.4 and 1.5). The two agencies agreed to use the same accounting approach in estimating their grazing program administration costs. That approach was to measure total range program costs, including both current account management costs and capital account improvement costs. Then, that portion of current and capital account costs that would be incurred if there were no livestock grazing was estimated. The "without grazing" range program cost was subtracted from the "total" range program costs. The balance was that portion of total range program costs attributable to livestock grazing: for the BLM $2.18 per AUM and for the Forest Service $2.40 per AUM in 1990. Weighted by the number of AUMs provided by each agency, the average reported cost of administering the grazing program of BLM and National Forests westwide was $2.26 per AUM in 1990.

This common accounting approach, as noted, adds to the current management cost the longer term improvement cost associated with the grazing programs of the two agencies. In 1990, the grazing program management cost was reported to be $1.47 per AUM for the BLM and $1.78 per AUM for the Forest Service. In either case, the grazing fee exceeded the grazing program management cost in 1990, since the PRIA fee was $1.81 and the National Grasslands fee was $2.86. Normally, costs of administration refer to the current account costs of management. Given this accounting stance, in 1990 BLM earned a net return above management costs of 23 percent. Since about ⅛ of the Forest Service AUMs are from the National Grasslands in the nine Great Plains states, the weighted Forest Service grazing fee was $1.99 per AUM in 1990,[45] and the corresponding net return above its management costs was 12 percent.

From a difference perspective, the BLM's potential fee contribution to its range improvement program was $0.34 per AUM in 1990, or 48 percent of the Bureau's $0.71 per AUM range livestock improvement program cost. A similar assessment is difficult for the Forest Service since the portions of fee receipts dedicated to range improvements on National Forests differ from the portion of National Grasslands fee receipts dedicated to livestock conservation practices.

It therefore can be concluded that the federal grazing fee does cover the agencies' costs of managing their grazing program. The fee does not cover both management and investment costs however. Since many range improvements benefit uses in addition to livestock, stock water developments for example, it is questionable whether the fee should also fully cover range livestock improvement investment costs.

The GAO's rather dramatic conclusions regarding the Federal Government's (as proprietor) costs of administering its domestic livestock grazing programs are overstated. In 1990, the net management plus improvement cost of administering the Federal Government's grazing programs was only two-tenths of one percent of the total cost to the American taxpayer of the Commodity Credit Association's net outlays or direct agricultural subsidy payments (Obermiller 1992a). This $6.5 billion acknowledged agricultural subsidy payment (which has grown to $12 billion in 1992) does not include the USDA's costs of administering the covered agricultural commodities. Why should the very small (in the sense of budget) federal rangeland grazing program be expected to do so?

Permit value: What and why?

Those who argue for federal grazing fee increases often note that permits have value. They are worth something to the owner of the commensurate base property, the permittee. The reason that value exists, it often is claimed, is because federal grazing permits have been underpriced relative to the market for a long time, and that the excess value (what permits are worth versus what they cost via the federal grazing fee, i.e., rent) has been capitalized as positive permit value.

No one argues that federal rangeland grazing permits have value, they do. The relevant question is why do permits have value? Is the level of the grazing fee the only explanation?

As noted earlier, throughout much of the Western United States the incidence of rangeland ownership by the Federal Government as sovereign is so great that if a rancher does not have a permit, the carrying capacity of the private ranch property is insufficient to support a commercially viable livestock operation. Thus, the permit value may in fact be at least in part an operating license cost, not unlike the costs of white water rafting, outfitting, and guide licenses (Torell et al. 1992). Another possible explanation is that the values of the permittee's own privately financed improvements on his or her federal grazing allotment are being capitalized in the form of "permit value."

In any case, the "value" of the holder is a "cost" to any prospective buyer, which explains the furor that surrounded the announcement of the 1969 fee system, from which permit cost was omitted when calculating the $1.23 per AUM and $1.33 per AUM "cost equalization" base fees. Since the time that grazing was first regulated almost all Western ranches have changed hands, meaning that no matter what has been capitalized, the federal grazing permits on which many Western ranches depend have already been purchased.

"The key in the grazing fee policy controversy is whether the Federal Government will recognize the permit value as a cost of doing business for the rancher. If the permit value is recognized there is no justification for fee increases because total costs of using public and comparable private lands are statistically equal. If all costs of grazing, specifically permit costs, accrued as revenue to the government the marketing system that now controls permit distribution would let fee rates to be increased. Thus, government pricing of grazing would be superficial because the market in permits would determine revenue to the government" (Nielsen and Roberts 1968, p. 4).

These permit costs are capital costs, just as the range improvement expenditures of the BLM and Forest Service are capital costs. It would not seen reasonable to expect the grazing fee to cover the Federal Government's capital costs while disallowing the capital cost of the grazing permit to the permittee. Yet since 1969 this is just what the formula-based federal grazing fees on BLM permits and leases, National Forest grazing allotments, and National Grasslands pastures have done. Today Western federal land ranchers paid for their grazing permits when they first purchased their ranch properties, and since 1969 have purchased their permits again.

Some argue that the original Western permittees received a windfall gain at the American taxpayers expense when they first received their grazing permits. Perhaps. In any case and for whatever reason, by 1966 BLM permits had an average value of $14.41 per AUM, National Forests permits had an average value of $25.35 per AUM, and National Grasslands permits had an apparent average value of $30.19 per AUM. As previously noted, the corresponding amortized values at six percent were $0.87 per AUM, $1.52 per AUM, and $1.88 per AUM in 1966 (see footnote 21, page 19, and footnote 22, page 21.) These amortized values, or permit costs, were not considered when the cost equalization base fees of $1.23 per AUM and $1.33 per AUM were set for the BLM/National Forests and for the National Grasslands in the 1969 fee formula, as continued in the PRIA and National Grasslands fee formulas. Thus, if the American taxpayer ever did give Western ranchers a windfall gain through the issuance of grazing permits, that gift has since been repaid through the existing grazing fee formulas.

As has been repeatedly noted, the issue of permit value and permit cost dominated the 1969 grazing fee hearings in the Senate and the House of Representatives. Serious consideration was given to proposed legislation which would recognize the grazing permit as a compensable "use right." Using a rather conservative estimate of $45 per AUM as the current average value of federal rangeland grazing permits, the current capitalized value of all federal grazing permits in the 17 Western states is roughly one billion dollars. Perhaps it is time to revisit the issue of rights to compensation.

CONCLUDING COMMENTS

Even if it is not the fundamental policy problem on our Western federal rangelands, the grazing fee issue will not go away (Burkhardt and Obermiller 1992). Today there is a proposal to increase PRIA grazing fees by 33 percent for the 1993 grazing season, from $1.92 at present to $2.56 per AUM on PRIA fee rangelands, and perhaps (although this is not presently proposed) from $3.42 to $4.55 per AUM on the National Grasslands.

Why? A higher federal grazing fee will simply mean higher federal grazing costs, and as has been seen federal rangeland grazing costs already are higher than private rangeland grazing costs. A higher federal grazing fee might or might not result in larger fee receipts to the U.S. Treasury, depending on how many federal AUMs would go unused at the higher fee level, and in any case the agencies' costs of managing their grazing programs already are covered at current fee levels. A higher federal grazing fee would certainly lead to asset devaluation in the Western livestock industry because of its negative effect on the value of grazing permits: but for what purpose since the American taxpayer already has recouped whatever windfall gain the original permittees may or may not have enjoyed?

A higher grazing fee would in all probability lead to less domestic livestock grazing on our federal rangelands in the 17 Western states. But if federal rangeland use is the issue, why not address the fundamental problem directly, including that of private rights in federal lands.

APPENDIX

A brief review of administrative resource pricing policy

National pricing policy for federal resources used by private individuals and generating private benefits stems from Title V of the Independent Offices Appropriations Act (IOAA) of 1952, passed by Congress on August 31, 1951 (65 Stat. 290). The relevant wording in the Title V of the 1952 Act is as follows:

"Any activity of every Federal agency '. . . shall be self-sustaining to the full extent possible, and the head of each Federal agency is authorized by regulation (which, in the case of agencies in the executive branch, shall be as uniform as practicable and subject to such policies as the President may prescribe) to prescribe therefor such fee, charge, or price, if any, as he shall determine, in case none exists, or redetermine, in case of an existing one, to be fair and equitable taking into consideration direct and indirect cost to the Government, value to the recipient, public policy or interest served, and other pertinent facts, and any amount so determined or redetermined shall be collected and paid into the Treasury as miscellaneous receipts.'"

This Act of Congress gave rise to the Administration's federal resource pricing policy as it exists today, and as applied to the subsequent agency and departmental evaluations of federal grazing fee alternatives. Indirectly, the IOAA set the precedent for later public law under which "fair and equitable" federal grazing fees were authorized (under FLPMA), then implemented (under PRIA), by statute.

The basis of administrative pricing policy

On September 23, 1959 the Bureau of the Budget issued Circular A–25 "User Charges" pursuant to Title V of the Independent Offices Appropriation Act, replacing and expending on the general pricing policy for all Executive agencies previously enunciated in Bureau of the Budget Bulletin No. 58–3 of November 13, 1957. Circular A–25 together with this underlying statutory authority provided the basis upon which the Secretaries of Agriculture and the Interior imposed the 1969 federal grazing fee formula, one quite similar to several of the formulas currently recently proposed as alternatives to the PRIA formula fee.

According to the testimony of the Deputy Director of the Bureau of the Budget made during the March 4, 1969, Hearing on Review of Grazing Fees by the House Committee on Interior and Insular Affairs, Circular A–25 states that ". . . where federally owned resources are leased or sold, a fair market value should be obtained. Deputy Director Hughes went on to say: "In most cases, the [grazing] fees charged do not reflect the fair market value of the grazing use privilege. Audit reports of the General Accounting Office have noted these inconsistencies and have been critical of fee levels." Twenty-three years later, the same agencies are making remarkably similar statements. It is the purpose of this Appendix to attempt to clarify and analyze the Administrative resource pricing policy in theory, and in practice, in relation to the federal grazing fee.

In his testimony, Deputy Director Hughes may have misstated or overstated the guidance with respect to federal resource pricing policy that the Circular actually gave. According to relevant passages (3. General Policy, and 4. Agency Responsibility) in Circular A–25:

"Where a service (or privilege) provides special benefits to an identifiable recipient above and beyond those that accrue to the public at large, a charge should be imposed to recover the full cost to the Federal Government of rendering that service. For example, a special benefit will be considered to accrue and a charge should be imposed when a Government-rendered service (a) Enables the beneficiary to obtain more immediate or substantial gains or values (which may or may not be measurable in monetary terms) than those which accrue to the general public * * * : or (b) Provides business stability or assures public confidence in the business. * * *

"Where federally owned resources or property are leased or sold a fair market value should be obtained—Each agency shall a. Identify the services or activities covered by this Circular; b. Determine the extent of the special benefits provided; c. Apply accepted cost accounting principles in determining costs; d. Establish the charges; and e. in determining the charges for the lease and sale of Government-owned resources or property, apply sound business management practice and comparable commercial practices. * * *

"The maximum fee for a special service will be governed by its total cost and not by the value of the service to the recipient."

Administrative pricing policy and Federal grazing fees

The wording of Circular A–25 implies that the provision of federal rangeland livestock forage is one of several commodity and amenity uses of federal resources, and all are subject to fee setting. In setting grazing fees, the intent to recover the cost of administering the livestock grazing enterprise, one of several enterprises administered within the range programs and range budgets of the federal land management agencies. The cost of administering the livestock grazing enterprise is to be calculated as though it were administered as a commercial business, implying private sector cost minimization practices. The cost calculations, not value of federal rangeland forage to the livestock owner, are to be emphasized in setting grazing fees.

Consistent with the wording of Circular A–25, the fee could be attached to either (a) AUMs taken, or (b) the permit or allotment as a unit. The fee setting practices of the federal land management agencies should be as uniform as practical, but this does not necessarily imply a uniform AUM or permit-based grazing fee. Variable grazing fees would be permissible, as long as the basis or process upon which grazing fees were established were uniform.

In June 1964 the Bureau of the Budget issued the results of their study of charges for the use of all federal owned resources in the form of a report "Natural Resources User Charges: A Study" supplementing Bureau of the Budget Circular A–25. "In fairness to the general taxpayer, who bears a major share of support of Federal activities, the Government has adopted the policy that the recipient of these special benefits generally should pay a reasonable charge for the service or product received or for the resource used." Citing the 1965 Budget Message of the President to Congress, "Many Federal Government programs furnish specific, identifiable

benefits to the individuals and businesses using them. Equity to all taxpayers demands that those who enjoy the benefits should bear a greater share of the costs."

The 1964 report established five basic grazing fee principles: (1) a uniform basis should be used by all federal agencies in establishing grazing fees; (2) fees should be based on the economic value of the use of federal grazing land to the user, taking into account such factors as the quality and quantity of forage, accessibility, and market value of livestock; (3) economic value should be set by an appraisal that will provide a fair return to the government and equitable treatment of the users; (4) competitive bidding should be used to provide guidelines as to true market value of federal rangeland forage, and where competitive bidding is not feasible the appraisal should take into account comparability with fees established for similarly conformed and administered state and private grazing lands; and (5) grazing fees below market value should be charged if a market value fee would significantly impair a federally sponsored program.

The language of the 1964 Bureau of the Budget report set the stage for all subsequent grazing fee studies and recommendations. ". . . studies should proceed to the development of consistent practices for the appraisal of land and forage and the establishment of fees which will insure equitable treatment of all lessees and permittees as well as a fair return to the taxpayers. Because economic value is not now being recovered for the use of a substantial portion of Federal grazing land, the Bureau of the Budget recommends that the Departments concerned be requested to apply the principles so that a uniform fee basis may be established or draft legislation be completed, where necessary, for consideration in Congress."

A brief analysis of administrative grazing fee policy

The general Administrative intent is that fees and other charges should be assessed by the Administration when federal resources are used by private parties, if the resource use provides an identifiable benefit to an identifiable party. This logic clearly applies to grazing fees, but it also applies to amenity uses of federal resources valued by identifiable private parties, as was recognized by the Public Land Law Review Commission (1970, pp. 287–288).

The Administrative pricing objective is to recover the full cost to the Government incurred in the provision of the special resource benefit, including both direct and indirect costs incurred by the administering agency in its current management of the program yielding that benefit. In the present case, this would be the direct and indirect costs to the Government of managing the federal rangeland livestock grazing enterprises in the Bureau of Land Management and the Forest Service. Other enterprises contained in the range programs and budgets of the federal land management agencies should not be attributed to the grazing enterprise, if those other enterprises yield benefits to parties other than permittees; nor should be counted as current management costs investment (range improvement) costs for the benefit of future uses and users.

The administrative cost need not be applied on a per AUM basis. It could be applied on a contract by contract (ie, permit by permit or lease by lease) basis, on a per acre basis, or on the basis of any other denominator reflecting the source and magnitude of benefit to the permittee. This is important because some of the federal rangelands really are just holding areas for livestock, with most of the livestock value-added accruing during that portion of the year when the livestock are on private property. In those cases where the allotment is merely a holding area, it would make more sense to price the permit (based perhaps on head of livestock) than price the AUMs, i.e., substitute a permit value for the grazing fee.

Pricing basis aside, Circular A-25 also states that the cost should be calculated as though they were incurred by a commercial business providing a comparable resource use and benefit. This is a problem if the federal land management agencies are not cost effective in their provision of the resource use and benefit. In other words, labor and capital inputs used by the agencies in providing federal rangeland livestock forage should be priced at their efficient market values, and not necessarily at the price and salary levels paid by the Government. Otherwise, for example, if for some reason Congress decided to triple the salaries of all Bureau and Forest Service employees, the corresponding leap in costs of administering the domestic livestock grazing programs would be cost ineffective, and the true (market) underlying cost would have to be discovered.

The point to keep in mind here is that if the agencies incur administrative costs that would not be incurred by private parties providing rangeland forage of comparable quality and accessibility, and under contractual terms and conditions identical to those followed by the agencies, then the additional Government costs above private costs need to be identified. These amounts then must be subtracted from the "full direct and indirect" cost to the Government of providing the federal rangeland livestock forage.

Another consideration is that the relevant cost is the Government's cost of providing the forage and habitat, not the cost of enhancing it. This problem is complicated by the division of grazing fee receipts into, among others, range improvement and restoration funds. It is a bit easier to deal with if the administrative cost is measured as a cost of providing present forage and habitat only—not a cost of recovering from past human errors and natural events, nor a cost of expanding future resource use opportunities. Improvement and restoration costs should not be counted as grazing program administration costs, and this is accentuated by the fact that successful recovery and improvement projects *benefit other special parties* who, to follow the spirit of the Circular, would have to be charged their proportional share of the benefits of recovery and improvement.

From an economic perspective, one shared by the BLM staff who have done the grazing program cost calculations in the recent past, there is one further nuance. In both the BLM and the Forest Service, domestic livestock grazing is viewed as a matter of both policy and regulation as a vegetation management practice. Stocking rates, timing, seasons of use, etc. are *prescribed* in the implementation of the grazing permit or license. The intent is to use livestock to accomplish resource management objectives that transcend livestock forage enhancement.

The prescribed nature of permitted livestock grazing means that the livestock, under imposed control restrictions, *generate intended benefits to nonlivestock uses and users.* If the livestock were not used to accomplish these nonlivestock management objectives, other practices such as manual brush control, herbicides, prescribed fire, etc. would have to be used instead.

There is, therefore, a benefit to livestock grazing that should be accounted for in determining the cost effective grazing enterprise budget in both the BLM and the Forest Service. The appropriate way of measuring that benefit (which should be subtracted from the full cost of the grazing programs measured, as earlier noted, in market prices) is to calculate the least costly alternative way of achieving the nonlivestock benefits which result from prescribed livestock grazing. By subtracting this amount from the efficient full cost of administering the current domestic livestock grazing program, a residual amount representing the real full cost of the grazing program is obtained.

All that remains to be done in order to implement the Administrative federal grazing fee pricing policy is to settle on a pricing unit. Once a decision has been made on the unit of measure of benefit (AUM, permit, number of head under permit, or whatever), the current year number of units of benefit can be calculated, and that sum can be divided into the "real full cost" of administering the current year domestic livestock grazing program. The result is the full cost recovery federal grazing fee.

As noted earlier, the argument that federal grazing fees should be increased because the American taxpayer is subsidizing the federal land management agencies' grazing programs is not very strong. The statutes and existing pricing policies are clear on one thing—administrative cost recovery (calculated properly) is a valid federal resource pricing objective. The statutes and policies are somewhat contradictory as to whether or not the cost recovery price (fee) should exceed the economic value of the forage use to the permittee, leaving that concern at least in part to the discretion of the relevant Secretary.

Several Solicitor's opinions have confirmed that the Secretary should take administrative cost into account, but that this administrative cost is one of several factors relevant to the final fee setting decision. Congress removed that Secretarial authority through PRIA, continued under the February 1986 Executive Order—but Congress *de facto* accepted the value of the use to the user as well as the administrative cost of the grazing program as relevant determinants of the grazing fee (the Congressional Record and the various Hearing Records are clear as to that Congressional intent). For these reasons it is very clear that appropriate and uniform administrative cost accounting procedures need to be actively maintained by both the BLM and the Forest Service.

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FOOTNOTES

[1]Public domain lands as defined here include lands withdrawn from the federally owned land base available for disposition and reserved for some specific public purpose such as timber production. The original Forest Reserves, most of which now are part of our National Forests, are examples of reserved public domain lands. Another example, one relevant to the current policy debate, was President Franklin Roosevelt's November 26, 1934 Executive Order (No. 6910) withdrawing all remaining unreserved and unappropriated public domain lands in the Great Plains region from settlement or sale (Peffer 1951, p. 224). These lands were reserved for "grazing projects" and national parks. The action was strongly supported by the Forest Service (Wallace and Silcox 1936, pp. 485–486) and was similar to, but went further than, the Taylor Grazing Act passed a few months earlier (June 28, 1934) which authorized the Secretary of the Interior to establish grazing districts on unreserved public domain lands pending their final disposal. Resource conservation and regulated livestock grazing as a preferred land use were common themes in both the Administrative and the Congressional initiatives of 1934.

[2]It is commonly thought that these privately owned lands were being dryland farmed but were better suited for perennial grass cover and domestic livestock grazing. In fact, most of the acreage acquired under the various New Deal programs had not been previously cultivated. It also is commonly thought that these acquired lands were purchased under Title III of the Bankhead-Jones Farm Tenant Act of July 22, 1937. In reality, most of the acreage already had been acquired by the time the Bankhead-Jones Act was passed, and Title III became the authority under which the acquired lands were administered.

[3]Roughly 2.3 million acres of acquired "Land Utilization Project" (LU) lands presently are administered by the BLM. These were transferred by various Executive Orders of 1941 through 1958 from jurisdiction of the Department of Agriculture (USDA) to the Department of the Interior (USDI) and now are managed by the BLM where nearly all of the LU acreage (2,302,500 of 2,318,889 million acres) is inside Section 3 grazing districts. The largest such transfer took place in 1958 at the request of the Montana Congressional delegation. President Eisenhower (Executive Order 10787, November 6) transferred 1.9 million acres of LU Project lands in Montana from the jurisdiction of the Forest Service (USDA) to the Bureau of Land Management (USDI). Two years later, the USDA created 19 National Grasslands from the 22 LU Projects in 11 Western states still under the jurisdiction of USDA (*Federal Register*, June 24, 1960, p. 5815).

[4]In 1963 the Secretary of Agriculture amended Section 213.1 of the Secretary's Regulation of 1960 as follows (*Federal Register*, June 19, 1963, p. 6268): "The National Grasslands shall be part of the National Forest system and permanently held by the Department of Agriculture for administration under the provisions and purposes of Title III of the Bankhead-Jones Farm Tenant Act" [emphasis mine]. This appears to be inconsistent with Section 32(c) in Title III of the Bankhead-Jones Act (BJA) which reads: "The Secretary may recommend to the President other Federal, State, or Territorial agencies to administer [the LU Project lands], together with the conditions of the use and administration which will best serve the purposes of a land-conservation and land-utilization program, and the President is authorized to transfer such property to other agencies."

[5]The National Grasslands were excluded from the PRIA formula fee system in Section 11 of that Act (43 USC 1907). Section 11 was added to the text of the Public Rangelands Improvement Act after the August 9, 2978 hearing, apparently in response to the request of the Department of Agriculture (U.S. Senate 1978, p. 37).

[6]The various National Grasslands presently in existence include the recently created Butte Valley National Grassland in California (18,000 acres), and the original 19 National Grasslands: the Pawnee (193,000 acres) and the Comanche (418,000 acres) in Colorado, the Curiew in Idaho (48,000 acres), the Cimarron in Kansas (108,000 acres), the Oglala in Nebraska (94,000 acres), the Kiowa in New Mexico (137,000 acres), the Cedar River (7,000 acres), Little Missouri (1,028,000 acres) and Sheyenne (70,000 acres) in North Dakota, the Black Kettle (31,000 acres) and Rita Blanca (16,000 acres) in Oklahoma, the Crooked River in Oregon (111,000 acres), the Buffalo Gap (592,000 acres), Fort Pierre (116,000 acres) and Grand River (155,000 acres) in South Dakota, the Lyndon B. Johnson (20,000 acres), Caddo (18,000 acres), Rita Blanca (93,000 acres) and McClellan Creek (1,000 acres) in Texas, and the Thunder Basin (572,000 acres) in Wyoming. Collectively, there are 20 National Grasslands in 12 states containing 3,846,000 acres of reacquired private land. One original "Purchase Unit", the Cedar Creek in Missouri (13,000 acres), has not been designated a National Grassland (Forest Service 1989).

[7]The 160 acre size limitation was contained in the Homestead Act of June 2, 1862. As it became apparent that parcels of this size often were too small for successful homesteading particularly west of the 98th Meridian, the size limit was increased. The Enlarged Homestead Act of 1909 increased the limit to 320 acres, and the Stockraising Homestead Law of 1916 increased the limit to one full section (640 acres). As early as 1878, John Wesley Powell had recommended to Congress that if the semiarid West were to be successfully homesteaded, . . . a large acreage (2,560 acre minimum) of range land [would be needed] to round out an economic home unit" (Wallace and Silcox 1936, p. 220).

[8]In 1934 the Natural Resources Board released a study calling for the acquisition and removal from cultivation of about 75 million acres of farmland nationwide, supporting the land acquisition program of the Federal Emergency Relief Administration that already was underway (see Clawson 1981, pp. 107-124). Two years later Secretary of Agriculture Wallace submitted a report to the U.S. Senate (Senate Document No. 199) that went further, calling for the reservation and acquisition of 125 million acres of land in the Western federal range land states (Wallace and Silcox 1936, p. 486), and that the grazing districts established under the Taylor Grazing Act of 1934 be removed from the jurisdiction of the USDI and placed under the jurisdiction of the USDA Forest Service (ibid. pp. 538-539).

[9]The LU Projects had resource conservation as their original purpose. Agricultural adjustments were believed to be needed to assure that fragile semiarid lands remain in or be converted to perennial grasslands used for domestic livestock grazing. In many of the LU Projects, resource and livestock management responsibilities were shared by the Soil Conservation Service (the administering agency from October 1938 through December 1953) and local grazing district associations. The grazing district management structure remains today on the National Grasslands in the states of North and South Dakota, Colorado, and Wyoming (and on the Montana LU Projects transferred to the USDI in 1958). These four states account for 82 percent of the total National Grassland acreage in the National Forest System. Nowhere else in the System is there a similar grazing district organizational structure; although a similar structure does exist on Section 3 grazing districts administered by the BLM.

[10]The primary mechanism used to regulate grazing was the grazing permit attached to commensurable base property, i.e., to deeded land linked via the permit to a grazing allotment. One reason why the commensurability requirement was imposed may have been the desire to relative sedentary cattle operators to drive competing transient sheep operations away from the grazing areas used by both (Rowley 1985).

[11]Various writers categorize the attributes or "bundle of sticks" that comprise a property right differently. One useful categorization is that a full set of property rights include the partial rights of ownership, use, transferability, and enforceability. Any combination of the first three 'sticks" may be delegated by the sovereign to private individuals or groups, subject to attached limits, restrictions, or attenuations. Enforceability remains at least in part the responsibility of the sovereign, and without enforcement the delegated "sticks" are valueless. In the case of grazing permits, ownership remains with the sovereign (the Federal Government) while restricted use rights and sometimes restricted transfer rights are delegated to permittees. Since the restricted use and transfer rights are enforced by the sovereign, the grazing permit as a partial property right assumes value.

[12]Hooper (1971) called the "use right" a quasi-right representing possessory interest with strict legal interpretation. Since the use right or possessory interest has market value, the IRS taxes capital gains on permits when ranches holding grazing permits are sold, and therefore the IRS allows permit holders to write off the loss of a grazing permit as a capital loss. The literature is reviewed by Quigley et al. (1988).

[13]The major restrictions on the use rights of federal grazing permits thus are commensurate base property (land or water), season of use, and stocking rate (number of animal units). Permit value accrues to the base property (Harbison 1991). The magnitude of the permit's value is determined by stocking rate and season of use in relation to owned base property feed and forage resources, given the costs of using the permitted forage. The grazing fee is one cost associated with the use of permitted federal forage, but generally constitutes only about ten percent of the total cost of federal forage use (Obermiller and Lambert 1984, Obermiller 1992b).

[14]It is true that at some federal grazing permit price (either fee level or total cost of forage use), it may be less expensive to utilize an alternative private sector forage source such as purchased hay or leased private pasture. In reality, the marginal cost of purchased hay as a substitute for grazing season forage is greater than the marginal revenue from the use of hay, meaning that hay is not an economically viable substitute for the seasonal supply of grazed forage. In many areas in the West, no private sector range or pasture is available as an alternative to the permitted federal forage. Hence, given the existing structure of relative feed and forage supplies, the federal grazing permit is a complement to the feed and forage supplies owned by the permittee.

[15]For an expanded discussion and additional documentation of the relationships among federal grazing fees, the degree of dependency of Western ranches on federal rangeland forage supplies, and permit and range values see Obermiller's 1991 supplemental testimony requested by Congressman Charles W. Stenholm, Chairman of the Subcommittee on Livestock, Dairy, and Poultry, House Committee on Agriculture (Serial No. 102-35, pp. 146–160).

[16]A total of about 22 million federal AUMs are authorized under the existing 28,952 federal grazing permits. The average grazing authorization is about 750 AUMs per permit. Some of these are group permits (e.g., the BLM Rock Springs Wyoming grazing permit with an authorization of nearly one million AUMs shared by over 30 permittees, each whom uses on average about 3,000 AUMs). Some individual ranchers hold more than one grazing permit. Still, with an average permitted season of use of four to five months in duration, simple mathematics suggest an average herd size of 150 to 188 cows on the federal allotments. Nationwide, the average cow herd size is 174 cows. The rule of thumb minimum herd size for a one family ranching operation is 300

cows. In their April 30, 1992 Report to Congress (*Grazing Fee Review and Evaluation: Update of the 1986 Final Report*) submitted pursuant to the directive in the Conference Report on the FY 1992 Interior and Related Agencies Appropriations Act the Secretaries state ". . . it should be noted that 90 percent of the . . . BLM permittees and 81 percent of the Forest Service . . . permittees remain medium- to small-size family operators."

[17] Quigley et al. (1988, p. 13) note that grazing fees actually were first charged on an experimental basis in 1900 for sheep grazing on the Forest Reserves administered by the Secretary of the Interior.

[18] While popularly known as the "Organic Act of 1897" the authorizing legislation actually was in the form of the "Pettigrew Amendment" to the Sundry Civil Appropriations Act of June 4, 1897 which ". . . never had to surmount the full legislative process" (Steen 1976, p. 36). For a more thorough review of the history of federal grazing fees, see Quigley et al. (1988).

[19] In 1947 the LU Project grazing districts were administered by the Soil Conservation Service in the United States Department of Agriculture. Not until 1954 were the LU Projects transferred to the jurisdiction of the Forest Service. The "Barrett Amendment" did not apply to the LU Project grazing programs.

[20] The 1969 uniform fee system did not apply to the National Grasslands. Not until 1979 did the National Grasslands obtain a grazing fee structure comparable to the fee system used on BLM and National Forest grazing allotments. The 1979 National Grasslands formula fee system was and is similar to that used on other Western federal rangelands, but due to empirical inconsistencies results in a higher grazing fee than that paid by BLM and National Forest permittees. For example, in 1991 the PRIA grazing fee was $1.97 per AUM while the National Grasslands grazing fee was $3.58 per AUM. In 1992 the PRIA grazing fee is $1.92 per AUM while the National Grasslands grazing fee is $3.42 per AUM. A major reason for the discrepancy is the North Dakota private pasture rental rate used when constructing the 1979 National Grasslands grazing fee formula. The existence of the discrepancy and its apparent explanation have led to efforts to implement a combined formula fee system resulting in a single grazing fee charged to all permittees in the 17 Western federal rangeland states, regardless of the jurisdiction under which the federal rangelands are managed.

[21] This omission of amortized permit cost characterizes the National Grasslands grazing fee formula as well. Its base fee, $1.73 per AUM prior to adjustments reducing the base to $1.33 per AUM, excludes the effect of an amortized permit cost of approximately $1.88 per AUM using a six percent interest rate. The consequence of its exclusion is discussed further in footnote 22.

[22] As noted earlier, if the amortized value of the cost of purchasing the permitted AUMs is construed as a grazing cost, the nonfee costs incurred by permittees increase accordingly. In 1966, the amortized value was $1.52 per AUM on National Forests, $0.87 per AUM on BLM permits, and apparently $1.88 per AUM on National Grasslands. On National Forests, the unadjusted residual base (excluding the amortized permit cost) was $1.02 per AUM; on BLM permits the residual base (excluding the amortized permit cost) was $1.30 per AUM; and on National Grasslands the residual base (again excluding the amortized permit cost) was $1.73 per AUM. Subtracting the amortized permit costs yields an adjusted base of −$0.50 per AUM on National Forests, $0.43 per AUM for BLM permits, and −$0.15 per AUM on National Grasslands permits (American National Cattlemen's Association 1968, Appendix A; Obermiller 1991c). In other words, all things considered National Forest and National Grasslands permittees would have to have been paid to graze on their federal allotments in 1966 in order for their total grazing costs per AUM costs of grazing on privately owned rangelands in the vicinity of their allotments. BLM permittes would see their fees increase by only ten cents per AUM. If a single grazing fee were to have been charged system-wide, its per AUM weighted value would have been zero. This prospect clearly was unacceptable to the Secretaries and to the Bureau of the Budget, explaining why the 1969 fee system was announced just a few days before the Administration left office, prompting the highly charged Senate and House hearings of February 27–28 and March 4–5, 1969 respectively.

[23] Executive Order No. 12548 imposed a floor value of $1.35 per animal unit month (AUM) on the federal grazing fee below which the actual fee charge would not be allowed to fall. This value, $1.35 per AUM, was the amount of the PRIA grazing fee in 1985. If it had not been for the imposed $1.35 per AUM floor, the PRIA formula would have generated grazing fees of $0.93 per AUM in 1986 and $0.98 per AUM in 1987.

[24] In 1983, just over 21 million of domestic livestock grazing were authorized on the National Forests and BLM rangelands in the 11 western states. Of this total authorization, Nevada and Wyoming each accounted for 13 percent, followed by Montana with 12 percent and Idaho with 11 percent. These four states collectively represented over one-half of the total federal (excluding National Grasslands) livestock AUM authorization. On an AUM basis, they accounted for only one-third of the reported private rangeland leases in 1983, however, (Secretary of Agriculture and Secretary of the Interior 1986, p. 86). The farm unit based weighting system does not reflect the distribution of federal AUMs in the 11, or in the 17, Western states.

[25] The four largest federal AUM states (excluding the National Grasslands) with over one-half of the total AUM allocation accounted for only 20 percent of the total beef cattle marketings by liveweight in 1983 (Secretary of Agriculture and Secretary of the Interior 1986, p. 86).

[26] The Report to Congress actually was not released until March 1986. By that time President Reagan had signed Executive Order 12548, freezing the PRIA formula until Congress passed alternative federal grazing fee legislation.

[27] Although it was not acknowledged by Congress in the requirement that the PRIA formula fee system be evaluated, recall that there were problems with the original $1.23 and $1.33 base fees. The federal land management agencies apparently had agreed with the Western livestock industry to take "permit cost" into account in conducting the 1966 Western Livestock Grazing Survey. They did, and the results were, as previously noted, negative base fees on the National Forests (−$0.50) and on National Grassland allotments (−$0.15) and a low base fee ($0.43) on BLM permits if allowance in cost calculations were made for the annual capitalized (at six percent) cost of purchase of the grazing permit. Hence, the $1.23 and $1.33 per AUM "base fees" understated the full costs of livestock grazing on federal rangelands (USDI National Advisory Board Council 1966, Appendix 14). On December 5, 1968 the Chairman of the House Committee on Interior and Insular Affairs (Congressman Wayne Aspinall) wrote the Secretary of the Interior stating "While I have known of the desire of the government agencies involved to make these [grazing fee] increases, I have been of the opinion that final determination should wait additional *consideration by the interests involved* as well as the results of consideration by the Public Land Law Review Commission which is making several studies in depth of user fees of all kinds on the public lands . . Personally, I have difficulty of understanding why the Administration which will go out of office in the near future should attempt to work its will on the matters involved in these proposals just before the new Administration takes over." [emphasis mine: Aspinall also was Chairman of the Public Land Law Review Commission and the "interests involved" may have reflected the interest groups to be identified in the 1970 final report of the PLLRC] Late in 1968, three weeks before the 1969 fee system was announced by the outgoing Administration (on January 14, 1969), a decision was made by the Administration. Permit cost would be omitted in calculating the base fees. That decision was announced to the Grazing Fee Committee of the USDI National Advisory Board Council on December 18, 1968 (USDI National Advisory Board Council 1968, pp. 8–9). Board members protested vigorously, claiming that an agreement had been violated, but it made no difference (ibid., pp. 9, 15). After the 1969 fee system was announced, hearings were held by the appropriate authorization committees in the Senate (February 27–28, 1969) and House of Representatives (March 4–5, 1969). In those hearings the key witnesses for the Administration were Philip Hughes (Deputy Director of the Bureau of the Budget), Boyd Rasmussen (Director of the Bureau of Land Management), and Ed Train (Chief of the Forest Service). Under intense questioning by Aspinall, Congressman Walter Baring, and Senator Frank Church the Administration gave its reasons for the decision to omit permit cost. Those reasons were (1) the fear that recognition of permit cost would result in legal action to recognize proprietary interest on the part of the permittee in the permit itself, implying rights to compensation; (2) the concern that federal grazing fees could not approximate private pasture rental rates if permit cost were included in calculating fees; and (3) a strong push by the Bureau of the Budget for full cost recovery in the administration of the range programs of the BLM and Forest Service.

[28] It is apparent that since 1986 both the Forest Service and the Bureau of Land Management have lost confidence in the appraisal results as proxies for the "fair market value" of federal rangeland forage. Instead, the agencies seem to be opting for a new formula fee system based on technical modifications of the PRIA formula using updates of the base fees derived from the 1966 Western Livestock Grazing Survey (Secretary of Agriculture and Secretary of the Interior 1992, pp. 2–5, 35–36, and 57–58). Their technically modified 1966 PRIA base fee is calculated to be $2.93 per AUM, assuming no structural or institutional change in the federal rangeland grazing market relative to the private rangeland grazing market since 1966. In a recently published Oregon State University Extension Service Special Report, Obermiller (1992b) demonstrates that in an Eastern Oregon case study permittee grazing costs have increased by 16 percent relative to private rangeland grazing costs since 1966. If this relative increase holds westwide (and it is possible to test that hypothesis), the corrected modified 1966 PRIA base fee would be *$1.32 per AUM* (versus $1.23 per AUM in the current PRIA formula and $1.33 per AUM in the current National Grasslands formula).

[29] For a more thorough review and analysis of such proposed bills, see Serial No. 102–35, the August 19–20, 1991 Hearings Record of the House Committee on Agriculture, Subcommittee on Livestock, Dairy, and Poultry, pp. 105–113 (Obermiller 1991a).

[30] Various environmental organizations have expressed support for initiatives that would lead to an increase in federal grazing fees on the basis of the permit value argument. See for example Serial No. 100–18, the September 22, 1987 Hearing Record of the House Committee on Interior and Insular Affairs, Subcommittee on National Parks and Public Lands, pp. 136 and 410.

[31] The appraisal results state that there are 13 different "average" private leasing rates in the Western United States, and six different "regional" private forage markets. On statistical and economic grounds, such a claim is indefensible (Houseman et al. 1968, 1992 *Update* pp. 3–4). Observed variation in data obtained by the appraisers is so great that "average" rates are meaningless. No attempt was made to test for significant differences among regional average rates, because to do so would have shown that the regional averages are not significantly different from one another.

[32] The methodological shortcomings of the Appraisal Study have been widely noted. No attempt was made before the fact to classify population characteristics. Without prior classification, random sampling is impossible. If samples are not random, they are not representative of the population. In this case statistical analysis is fruitless, and any statistics derived from the data have no interpretable value. Nonetheless, the appraisers calculated statistics from their nonrandom data, and they defended those statistics as reliable based on their "informed judgment" while simultaneously making the disclaimer, "In no case do the appraisers represent this Appraisal Report or the conclusions contained herein as being a product of statistical methodology" (Tittman and Brownell 1984). It must be emphasized that the identified shortcomings are in no way redressed by the statement that" ". . . the agencies' appraisal report and the appraisal review were performed to recognized professional appraisal standards" (Tittman and Brownell 1984). That statement misses the point entirely. At issue is not whether the appraisal was done in a technically correct manner, but rather (1) should an appraisal have been done, (2) if so, what type(s) of appraisal, and (3) how should the results be interpreted and used?

[33] Look carefully at the testimonies of Assistant Secretary Dunlop (USDA) and Assistant Secretary Griles (USDI) in the 1987 Hearing Record (Serial No. 100–18, pp. 114–115 and 126–127) as expanded by the Bureau of Land Management's Senior Economist in his Natural Resources Defense Council et al. v. the Secretaries of the Interior and Agriculture, Eastern District of California District Court affidavit (Waite 1986).

[34] See especially "Part II: A Scientific Evaluation and Critique of the 1986 and 1992 Grazing Fee Studies." Dudley and Rostvold concluded that the "mass appraisal" approach to valuation (1) yielded highly questionable conclusion, (2) based on data altered by "analytic license" to produce "subjective results."

The Pepperdine University authors stated that the commensurability requirement demands absolute control over comparability of the appraised and the reference properties, and that no such control was exercised. They conclude that the final conclusions in the Appraisal Report (see Figure 5) have a probability of accuracy of less than one percent.

[35] Appraisers are taught to use two approaches when deriving subject property values. These are (1) the comparable market sales approach and (2) the income approach. The result is a value range representing economic use value on the one hand (income approach) and prevailing market value on the other (comparable market approach). The appraisers opted to place exclusive reliance on the comparable market approach, but did not control for comparability. Why? The answer is simple, according to the published Appraisal Report. The income approach was rejected *a priori* because this ". . . approach would be based solely in the user's ability to pay, and not on fair market value to the owner" (Titman and Brownell 1984). That is a peculiar statement. It implies on the one hand that conventional appraisal methodology should not be used to establish federal rangeland forage values. If that is so, why was exclusive reliance placed on the appraisal results? On the other hand, the Forest Service and Bureau of Land Management had been directed, by statute, to evaluate the PRIA formula fee system. PRIA specifically states that the formula reflects, in part, the economic value of federal rangeland forage to the user, the permittee. On what possible grounds may it then be argued that the income approach, that which estimates economic use value, is inappropriate? There is, of course, no answer.

[36] Quigley and Taylor (1983) identified market interdependence as the most damaging theoretical criticism of comparable market approaches for establishing federal grazing fees. In their Harney County, Oregon, case study, Collins and Obermiller (1992) detected strongly significant statistical interdependence between private and federal forage markets (at the 99 percent level of confidence). Noting that this interdependence violates the implicit assumption of market independence in appraisal theory (Boyce and Kinnard 1984) and therefore the comparable market appraisal approach can be used to determine the fair market value of federal rangeland forage only if the federal government's influence on the private forage market is minimal (Gulley 1983-1984), Collins and Obermiller concluded that the use of the mass appraisal results would have ". . . particularly undesirable consequences" (ibid., p. 188) and would result in poor federal rangeland pricing policy.

[37] Values are unique to things exchanged, to the individuals who buy and sell them, and to the times and places in which they are exchanged. If a market, and therefore a market price, does not exist for that which is exchanged, only with strictest caution can value be inferred from the observed price of a similar thing exchanged in an actual market.

[38] This point has legal connotations. As Achterman (1984) points out, it must be asked whether the "comparable market" data and conclusions contained in the 1984 Appraisal Report (and as incorporated in the "Market Value" fee alternatives to PRIA as reported to Congress and as incorporated in recent and current proposals to change the PRIA formula fee system) constitute a legally admissible basis for opinion as to value. At best, the appraisal results represent highly subordinate evidence of federal rangeland grazing values.

[39] To properly control for qualitative differences in the federal and private forage markets, three rules must be carefully observed, First, the buyers and sellers in both markets (the actual private forage market and the federal forage "nonmarket") must be similar, and must be unencumbered (willing and unrestricted) market participants. As has been noted, the terms and conditions of grazing permits are highly restrictive. Individuals can enter and leave the private forage market at will. Permittees cannot. Subject to a three year grace period, permittees must use their grazing permit, and pay the administered grazing fee, or risk losing their grazing privilege. Second, the qualities of the goods or services being exchanged must be identical (since perceived quality to an identified user is the source of a thing's value to that user). The existence of public domain rangelands suggests qualitative differences between those grazing lands that were successfully homesteaded and those which was not. Third, the markets must be separate and unrelated, or independent. Otherwise, is impossible to correlate cause (e.g., shift in demand for forage) and effect (e.g., change in price—private grazing rental rates or public land grazing fees) in either market because of market interactions. As Collins and Obermiller (1992) have demonstrated, the private and federal forage markets are neither separate nor unrelated, but rather are statistically interdependent.

[40] Documentation appears in a report of a survey sponsored by the Federal Extension Service (Obermiller and Lambert 1984, Obermiller 1992b). The report details results of surveys conducted in Oregon, Idaho, Nevada, Wyoming, North Dakota, and South Dakota. Similar results were obtained in subsequent surveys conducted in California and Colorado (Bartlett et al. 1984.)

[41] In Table 1 the nonlease costs for cattle grazing on private rangelands were $2.75 per AUM in 1966 ($4.54 per AUM minus the private lease rate of $1.79 per AUM). The nonfee costs for cattle grazing on federal rangelands were $3.28 per AUM. This means that the nonfee/nonrent costs for cattle grazing on federal rangelands were $0.53 per AUM more than on private rangelands in 1966.

[42] This has strong implications for the value of the price index adjusted base fee in the PRIA formula, as represented by the "PRIA with Technical Modifications" alternative described in the 1992 *Update*. These implications were summarized earlier (see footnote 24, p. 23).

[43] The Forest Service does not allow subleasing of grazing permits under any circumstances, but there are instances under which BLM grazing permits may be legally subleased. The sublessee must have control over both the commensurate base property and the livestock. The lessee may provide services, since the lessee can be assumed to be knowledgeable of the characteristics of the subleased BLM allotments. Ceteris paribus, it can be assumed that a legal sublease including services provided by the original permittee would command a higher lease rate than the grazing fee, since no services are provided by the agency.

[44] The $3.65 per AUM rangeland lease rate included the value of some unspecified bundle of services provided by the landlord. In the 1966 Western Livestock Grazing Survey the average "bare ground" or "no services' private rental rate was $1.79 per AUM, as reported in Table 1. Thus, the average value of services provided by the landlord was $1.86 per AUM in 1966. In 1966, roughly half of the prevailing rangeland rental rate was attributable to services provided in conjunction with the rental of private grazing land. If this same relationship were true in 1983, and if no structural change has occurred in federal versus private rangeland grazing since 1966, the appraisal values reported in Figure 5 (assuming they are accurate) overstate the value of federal forage by 50 percent.

[45] In 1922, given the number of BLM, National Forest, and National Grassland AUMs in the 17 federal rangeland states, the AUM weighted combined federal grazing fee would be $2.00 per AUM assuming all permittees paid the same fee. Correcting for the apparent error in the North Dakota base period data (see footnote 16, page 14), the combined westwide fee would be $1.96 per AUM in 1992. In contrast, in 1992 the PRIA fee is $1.92 per AUM and the National Grasslands fee is $3.42 per AUM.

Mr. DOMENICI. I remind the Senate that on a similar although little bit different amendment last year on appropriations, 60 Senators from both sides of the aisle supported a motion to table; 38 did not. I am also reminded that if this happens not to be tabled, I believe the Senate will be in on this bill not only tonight and tomorrow, but I think they will be in part of next week.

I yield back any time I have.

GRAZING FEE ISSUE

Mr. SYMMS. Mr. President, the grazing fee issue is not one that is taken lightly in my State of Idaho. Two out of every 3 acres of my State is owned by the Federal Government. Of the remaining private land, 98 percent is either incapable of producing the necessary forage for grazing, or it is already involved in agricultural production of other types. That leaves the public land to supply the bulk of Idaho's grazing.

Cattle production, in Idaho, is a very significant portion of our agricultural base. It constitutes approximately 2 percent of the State's gross state product, or $570 million dollars—1987 data. Just for comparison's sake, that is a greater percentage of the State's economy than wheat is in Kansas, twice what corn is in Illinois, and five times what oranges are to Florida.

So when Congress proposes a grazing fee policy that threatens to drive cattle production from the public lands in my State, you might as well be banning milk in Wisconsin. In truth, the impact on the State's economy would be 10 times greater.

There is an old saying that goes, "if it ain't broke, don't fix it." What that means for the public policy debate over grazing fees is that the burden of proof lies with those proposing to alter the current formula. They must show that it is broke, before we should jump toward any proposed fix. It is not enough for proponents to claim the fee is too low, or to claim that grazing is somehow abusing public lands. They must prove their claims.

And from what I can see, that will not be easy. The evidence seems to go in the opposite direction. Take the fee-too-low argument to begin with:

First, the USDA's Economic Research Service has found that there is no appreciable difference in net cash receipts between public and private land cow/calf operations.

Second, an independent cost analysis in the State of Idaho found that public land nonfee costs are actually much higher than private land costs—$14.59 per animal unit month compared to $7.54 per animal unit month on private pasture.

Third, the cost of grazing allotments is often built into that of a homestead or ranch, and is therefore paid as a capital cost when the base ranch was last purchased, that is, in any transaction of land since the 1940's.

Fourth, Pepperdine University completed a study earlier this year that concluded that BLM and USFS cost comparisons of private versus public grazing cost reports to Congress have drawn questionable conclusions based on manipulated information.

Fifth, more recently, the Heritage Foundation has studied this issue and recently released a report entitled, "Why Grazing Fees on Federal Lands Should Not Be Raised."

I've placed much of this information in the RECORD before, but this Heritage report is new and I ask unanimous consent that it be reprinted in the RECORD at this time.

There being no objection, the report was ordered to be printed in the RECORD, as follows:

[The Heritage Foundation, July 29, 1992]

WHY GRAZING FEES ON FEDERAL LANDS SHOULD NOT BE RAISED

INTRODUCTION

Congress currently is considering legislation which would increase the fees charged by the federal government to the 31,000 Western ranches who graze sheep and cattle on 318 million acres of federally owned land. A proposed 33.3 percent hike in the fees is contained in the appropriation bill for the Department of the Interior (H.R. 5503), which passed the House of Representatives on July 22, and in the authorization bill for the Bureau of Land Management (H.R. 1096), which passed the House last summer. Action on both bills is expected soon in the Senate.

According to a recent report by the Secretaries of Agriculture and the Interior, the federal government spent $52.3 million more on rangeland administration in 1990 than it received in grazing fees,[1] prompting the claim that ranchers who graze their sheep or cattle on federal land are receiving a subsidy. The wide disparity between grazing fees on federal and private rangeland also gives plausibility to the notion that ranchers receive a subsidy. The proposed fee increases are intended to eliminate this supposed subsidy. The average grazing fee on private land in 1991 was estimated by one researcher to be $9.19 per Animal Unit Month or AUM. An Animal Unit Month represents the amount of forage that normally would be consumed over a one-month period by one cow and her calf, or five sheep, or one horse. The fee on federal land currently is only $1.92 per AUM.

The argument for a fee hike is appealing on its surface, but closer scrutiny reveals serious flaws. For instance: There is a good reason why the price charged for grazing on public land typically is lower than for private land. Private land generally is of better quality and the owners provide ranchers with fences, roads, water, and protection for livestock. Ranchers must provide these services for themselves on public land.

The federal government does not, in fact, own the valuable water rights on its Western lands.—These rights already belong to the ranchers. Private landowners leasing out their rangeland, on the other hand, own the rights on their own lands. Thus it should be expected that ranchers using public land should pay a lower fee than they would pay for access to private land—otherwise ranchers would be charged for rights they already own on public land.

The federal government retains title to public land, but it may not actually own the grazing rights.—The law is unclear as to whether Uncle Sam or the ranchers own the rights. Ranchers used these lands for decades before the government began charging fees, but the federal government never explicitly recognized an ownership right to graze these lands. The government has, however, recognized property rights of some kind with respect to grazing. In fact, the Internal Revenue Service treats a rancher's grazing rights as private property for estate purposes.

If the fees were raised by the amount being considered by Congress, fewer ranchers would make use of public grazing lands.—In all probability, Washington would end up collecting less revenue rather than more.

The controlled grazing that now occurs helps to protect the ecology of the West, and so reduces the costs taxpayers otherwise would pay to protect the environment.—For instance, cattle aid decomposition of vegetation by trampling the soil and even help spread seed and fertilizer. Also, foraging keeps grass short and so helps prevent prairie fires. In fact, without cattle, much of the fertile land would become desert.

The dispute over grazing fees has its origin in government ownership of the land. If Congress were to sell the land to private owners, the government would obtain billions of dollars in proceeds and market-driven fees would accurately reflect the value of grazing rights to ranchers. Short of this step, lawmakers should recognize the flimsiness of the argument that ranchers receive a subsidy and keep grazing fees at their current levels.

ORIGINS OF THE GRAZING FEE CONTROVERSY

The ranchers who homesteaded the Western rangelands acquired some parcels of land outright, but simultaneously they obtained the right to graze livestock on adjoining lands still owned by the federal government. Just as mining companies in some instances acquired the mineral rights underneath federal land, so these ranchers acquired the grazing rights. Moreover, under state property laws in the Western states, sources of water were and still are considered owned by whoever first makes beneficial use of it. Since the ranchers used the water on the federal lands for their cattle and sheep, and the federal government did not, the ranchers became the owners of the water rights.

Fair Market Value.—Ranchers initially were not charged for access to federal land, but grazing fees were instituted in 1906. Significantly, the charge first was called a tax rather than a fee, out of tacit recognition that the ranchers already had the right to graze their cattle on federal land. The purpose of the tax was to pay for the cost to the federal government of managing the lands to prevent overgrazing. The Taylor Grazing Act, passed in 1934, required the federal government to charge the "fair market value" to the ranchers for their grazing allotments. Later, in 1978, the Public Rangeland Improvement Act (PRIA) created the current formula used to set the fees.

Congress recently ordered the two government agencies responsible for managing public rangeland—the Department of Agriculture's U.S. Forest Service and the Department of the Interior's Bureau of Land Management (BLM)—to update their 1986 report assessing the fair market value of federal grazing lands. The agencies concluded this year that the government currently charges below fair market value. This conclusion was based partially on the fact that the government charges substantially less money to ranchers. The current federal charge is $1.92 per AUM. While nobody actually knows the average charge for the use of private pasture, most estimates place it significantly higher than $1.92 per AUM. According to Frederick W. Obermiller, Professor of Agricultural and Resource Economics at Oregon State University, the average rental rate for private pasture is $9.19 per AUM.[2] The BLM also estimates that about 16 percent of federal rangeland is in poor shape. This has promoted members of Congress to advocate higher grazing fees to reduce grazing, which is perceived by some to harm the ecology.

Congressional Proposals.—There are three fee increase proposals now before Congress. One by Representative Michael Synar, the Oklahoma Democrat, would raise federal fees over several years to a minimum of $8.70 per AUM. A second proposal, offered by Representative Ralph Regula, the Ohio Republican, passed the House last year as part of H.R. 1096, the BLM authorization bill, and now is pending in the Senate. This would raise fees by 33.3 percent per year for several years, reaching an expected level of $4.68 to $4.87 per AUM in 1996, and likely rising even higher in subsequent years. A third proposal, which is a variation of the second, is contained in the version of H.R. 5503, the Department of the Interior Appropriations bill, which passed the House on July 22 of this year. Because H.R. 5503 is an appropriation bill, it cannot set fees for more than one year at a time. Therefore, H.R. 5503 contains only the first of the series of 33.3 percent fee increases proposed by Regula. This would raise the fee from $1.92 to $2.56 per AUM. If a one-year increase passes, Regula is expected to propose a further incentive next year.

Raising fees would seem on its face to solve two problems at once. The action would eliminate what appears to be a subsidy to ranchers, and a fee hike would reduce the supposed environmental harm caused by grazing. But the issue turns out to be much more complex. In fact, large increases in grazing fees actually could exacerbate the problems they are meant to solve.

WHY FEDERAL LAND IS WORTH LESS

In determining whether the government charges the fair market value for grazing on federal lands, a 1986 report by the Forest Service and the BLM and a 1992 update conducted by the same agencies make two crucial errors.[3] First, the report and update use faulty statistical methods to arrive at the conclusion that fees are too low. Cy Jamison, Director of BLM, has acknowledged these statistical methodology problems, admitting that "[f]rom where we took off to do the [1992] study, it never resolved issues of how the methodology [used originally in the 1986 report] was developed to set the fee. We need to go back and look at the whole picture."

Second, the report and the update assume that the value of foraging on federal land is equivalent to foraging on privately leased land. It is not. The right to graze on private land is far more valuable than the same right on federal land, because there are a variety of important differences between federal and private land.

Poor Quality.—For one thing, federal rangelands generally are of poorer quality, more remote, and more difficult to manage and control than private lands. Homesteaders had their choice of land, so naturally they took the best lands for themselves. Only the least valuable parcels remained federally owned.

Fewer Services.—For another thing, private lessors provide a number of important and valuable services that the federal government does not provide. A rancher who leases federal rangeland, for instance, usually must, among other things, build his own roads, erect and repair his own fences, and furnish his own water tanks and reservoirs. A rancher who leases private rangeland has all these services provided for him.

Shared Access.—Another important difference is that a rancher who leases federal

[1] Department of Agriculture, U.S. Forest Service, and Department of the Interior, Bureau of Land Management, *Grazing Fee Review and Evaluation: Update of the 1986 Final Report*, (April 30, 1992), p. 7, Figure 1.5. Data cited are based on the best available data from the most recent year available.

[2] Frederick W. Obermiller, "The June 20, 1991, Synar Amendment to the House Interior Appropriations Bill Effects on Fee Receipts and Grazing Use of Public Lands—A Preliminary Assessment," June 23, 1991, p. 4.

[3] Department of Agriculture, U.S. Forest Service, and Department of the Interior, Bureau of Land Management, "Grazing Fee Review and Evaluation" (1986). For the 1992 update, see footnote 1, above.

rangeland must share the land with the general public. Campers and hunters often leave gates open, requiring the rancher to retrieve strays and leading to loss of some to predators. Further, hunters sometimes shoot cattle by accident. On private lands, the lessor not only will prevent public access, thereby decreasing the frequency of animal loss, but normally is obliged to round up any strays that do wander. And in some instances the lessor even will insure the lessee against this loss as a part of his fee. The federal government never does this.

Because the operating costs of ranching on public lands are much higher than on private lands, the rights to graze public lands are worth less. In order to make a fair comparison, therefore, one would need to adjust the average grazing fee on private land by subtracting the value of all the services that a private landlord provides, differences in fence and road maintenance costs, the value of private water rights, and the value of the right to exclude the general public, as well as the differences in the underlying quality of the land. Oregon State University's Obermiller has estimated the appropriate fee differential between federal and private rangelands. By his calculations, if private land were provided under the same terms and conditions that currently apply to federal land, then even the best private land would be worth only $4.51 per AUM.[4]

This represents the highest fair market value that any parcel of rangeland could have, and it would have to be a premium-quality parcel. The overwhelming majority of public parcels are of lesser quality, more remote, and more difficult to manage. Thus, their fair market value is much lower—$2.09 per AUM or less, according to Obermiller.[5] Indeed, for a substantial portion of the federal government's rangeland, even the current fee of $1.92 per AUM is too high. According to the Forest Service, approximately 20 percent of the grazing allotments currently available go unused.

THE EXISTENCE OF PRIOR PRIVATE GRAZING RIGHTS

Another important difference between federal and private rangelands calls into question whether the federal government should charge any fee at all. Many Americans tend to think that owning a parcel of land implies the rights to build, farm, or use the land's resources, such as grass, timber, water, or minerals. But different individuals actually can own partial rights to the same piece of land. This is the case with federal rangeland. The land does not belong wholly to the federal government. Ranchers who graze their sheep or cattle on federal rangelands already own a variety of important and valuable property rights to the land.

In most instances, ranchers began to use lands adjacent to their homesteads and the water on it to graze their livestock decades before the federal government started charging a grazing tax or fee. Indeed, the federal government implicitly recognized these pre-existing grazing and water "rights."

Recognizing Rights.—When it first started charging a fee and regulating the number of cattle or sheep that could graze on the open range, for instance, it assigned the grazing allotments on the basis of these pre-existing rights. Further, the government in numerous other ways recognizes that some form of rancher ownership exists. The Internal Revenue Service levies an estate tax on the ranchers' ownership interests in federal lands. Also, the military is required by law to compensate ranchers whenever it appropriates the federal land. In addition, range rights can be purchased only from the rancher who owns them, not from the federal government.[6] Finally, the ranchers whose sheep and cattle graze on federal land have constructed, mostly at their own expense, hundreds of millions of dollars worth of fences, wells, reservoirs, and other improvements that are not required when they lease private rangeland. When Congress passed the Taylor Grazing Act in 1934, it explicitly recognized that ranchers owned these improvements. In fact, the Act required subsequent purchasers of the grazing permits to reimburse the previous owner for the value of those improvements.

One can argue, as many Western ranchers do, that pre-existing grazing rights already fully entitle them to graze their cattle and sheep on federal land. According to this view, any fee at all represents an attempt by the federal government to make the ranchers pay for property rights they already own. Moreover, even if a modest grazing fee can be justified as a user charge for land management services that the federal government provides, the government should take account of the ranchers' water rights and improvements in setting the level of the fee. The ranchers cannot fairly be charged for what is already theirs. Indeed, the government risks expensive litigation if it raises fees significantly, on the basis that it has "taken" the ranchers' property and thus owes them compensation.

HIGHER FEES COULD MEAN LESS REVENUE

Advocates of higher grazing fees want the federal government to take in more revenue so that it can cover fully the costs it incurs in managing federal range lands for ranchers. Their argument assumes that the federal government is not breaking even already. However, this is far from clear. The $52 million shortfall cited in the Forest Service-BLM update contains many costs not related to administering the grazing program. This alleged shortfall includes management costs that are attributable to recreational and other non-grazing uses of rangelands. Excluding these other costs from the calculation, it turns out that the average cost of grazing program management alone is only $1.47 per AUM for BLM land and $1.78 for the Forest Service land, according to Professor Obermiller.[7] Since the federal grazing fee in 1990 was $1.91 per AUM, the government has been making a slight profit on its grazing programs, not a loss. By comparison, the federal government recovers only one percent of its recreational management costs through user fees for visitors.[8]

Notwithstanding any calculation of appropriate management costs, higher grazing fees probably would result in a net loss of funds to the federal government. While the government would collect more money from any grazing allotments that continue to be used, a higher fee would mean that more allotments would fall into disuse. Some 20 percent of the current available allotments, or some four to five million AUMs, already go unused because, for many parcels, the current fee of $1.92 per AUM already is too high. Studies by Professor Obermiller indicate that the number of allotments used would fall sharply under the grazing fee formula proposed in the legislation now before Congress, from the current level of about 18 million AUMs to only about 9 million by 1996.[9] Since the formula proposed in H.R. 5503 eventually could raise the fee for grazing on federal land above the fair market value of even the best parcels, the number of allotments used conceivably could drop to zero sometime after 1996.

HOW COSTS WOULD INCREASE

The argument for raising fees implicitly assumes that the government's cost of administering its lands would be reduced with less grazing. In fact, most of the costs of monitoring and managing federal rangelands would be incurred whatever the level of grazing because most of the government's administration costs are fixed. Further, the government no longer would enjoy the many benefits it now receives from private ranchers, such as building and maintenance of roads and fences, the creation of watering holes, the clearing of brush, and control of erosion and predators. BLM Director Cy Jamison predicts that if ranchers were removed from federal land, the cost to the government of managing the range actually would increase by as much as 50 percent.

The increased outlays for the federal government due to higher grazing fees probably would be much greater than this estimate of increased outlays. For one thing, if ranchers are priced off federal rangelands, the government would have to build hundreds of thousands of miles of fences to keep cattle from trespassing onto federal land. In the Eastern states, a cattle owner is responsible for putting a fence around his land to keep his cattle in, and is liable to his neighbors if his cattle escape and trespass onto the neighbors' land. However, in most Western states, a landowner who fails to put a fence around his own land may not recover for trespass if other people's cattle come onto his land because the landowner is legally responsible for fencing the cattle out.

Billions for Fences.—No one knows precisely how many miles of fencing the federal government would have to build. Because federal land in most Western states is interspersed with private land in a checkerboard pattern, however, the amount of fencing required would be enormous. In one grazing district in Wyoming alone, the BLM estimates that it will have to put up 13,222 miles of fencing at a cost of almost $98 million if cattle grazing is discontinued because of excessive fees. The total cost to the federal government of fencing cattle off all its Western rangelands could be several billion dollars.[10]

The federal government also would have to pay additional billions of dollars to survey its land and determine its property boundaries. This was never completed in the past because there was no need to determine the precise boundaries between the federal lands and the adjoining private lands whose owners were using the federal lands. Since the cost of fencing and surveying would, in many instances, exceed the value of the land itself,

[4] Frederick W. Obermiller, "The Treasury and Land Use Implications of Increases in Grazing Fees on the Western Public Rangelands as Proposed Under H.R. 5503," July 13, 1992, p. 6.

[5] *Ibid.*

[6] Wayne Hage, *Storm Over Rangelands* (2nd ed.) (Bellevue, WA: Free Enterprise Press, 1990).

[7] Frederick W. Obermiller, "In Search of Reason: The Federal Grazing (Fee) Debate," testimony presented to the Subcommittee on Public Lands, National parks and Forests, Committee on Energy and Natural Resources, 102nd Congress, 2nd Session, July 1, 1992, p. 44.

[8] M. Clawson, *The Federal Lands Revisited* (Baltimore, Maryland: John Hopkins University Press, 1983), p. 100.

[9] Obermiller, testimony of July 13, 1992, *op. cit.*, p.7.

[10] See Warren Brookes, "Can Democrats Take Back the West?" *The Washington Times*, September 17, 1991, p. F4.

the government might have to let ranchers graze their cattle for free. However, if the federal government were to attempt to force the costs of fencing or surveying onto adjacent private landowners, it would face substantial litigation costs.

Reduced Revenues.—Above a certain level, a higher fee will produce less grazing fee revenue than a lower one. Professor Obermiller's calculations suggest that, ignoring increased outlays and reduced income tax receipts, gross grazing fee revenue alone would be maximized at a fee of around $3.30 per AUM. But this would bring in only about $15 million in additional federal revenue because of the sharp reduction in the number of AUMs that would continue to be used, considerably less the $25 million anticipated by proponents of higher fees. Under the formula proposed in H.R. 5503, grazing fees would rise above their gross revenue-maximizing level of $3.30 per AUM by 1994, and so the federal government would experience a reduction in grazing fee revenue when higher fees took effect in subsequent years.[11] Moreover, Obermiller's figure of $3.30 per AUM does not take into account either the increased costs that higher fees would entail or the loss in federal income tax revenues that would accompany a contraction in the cattle industry. Overall, even at Obermiller's gross revenue-maximizing level, net revenue probably still would decline. This would occur both because of higher costs and because a higher fee would reduce federal income tax collections by more than the increase in grazer fee revenue.

Because federal land in most Western states is interspersed with private land in a checkerboard pattern, most private ranchers have to use some federal land in order to raise their cattle. The private acreage alone cannot support enough head of cattle yearround to make most ranch operations profitable. Moreover, most ranchers paid a price for their land and have mortgage loans that reflect the current grazing fees. A fee increase immediately would reduce the value of their ranches as collateral, making it difficult or impossible for many to get operating capital. Thus, many ranchers—whose average annual income is only $28,000 even under the current fees—would be driven out of business. This would mean significant economic harm to the Western states and a reduction in U.S. beef, lamb, and wool production.

HARM TO THE ENVIRONMENT

Some advocates of higher grazing fees acknowledge that a fee hike would reduce grazing but maintain that less grazing would be good for the environment. But reduced grazing in reality would damage the West's ecology. The reason is that livestock grazing can be good for rangelands. Cattle and sheep accelerate decomposition of vegetation by trampling it, thereby recycling vital nutrients, and by helping to spread seeds and fertilizer. Grazing also helps prevent fires, which can start and spread most easily in long, dry grass that has not been clipped by foraging. Brush-clearing by private ranchers whose cattle graze on federal land further reduces the danger of fire. Furthermore, livestock producers have built tens of thousands of watering sites on federal lands, thereby improving those lands and benefitting various species of wildlife. Since 1960, for example, elk and moose populations on federal land have increased by 782 percent and 476 percent, respectively. And controlled grazing along riverbanks helps prevent the grass from becoming overgrown and can promote the growth of young trees that, when older, provide shade and prevent erosion

By contrast, a lack of grazing can lead to the land rapidly turning to desert, a process known technically as desertification. Lands left untrampled by grazing animals develop a water-resistant crust that causes the soil to absorb less rain. In addition, uneaten grasses remain standing after they are dead, locking up nutrients, blocking sunlight from reaching live grass below, and slowing seed dispersal. A striking example of the difference grazing can make is found in the Servilleta National Wildlife Refuge in New Mexico. Inside the Refuge, which has been off limits to cattle for more than fifteen years, the land is rapidly turning to desert. But pastures just outside the Refuge, which have been grazed continuously, remain as healthy as ever.

The fear of cattle destroying the range arose from several major episodes of overgrazing that occurred between the end of the Civil War and 1910.[12] However, ranchers and sheepherders learned from these experiences. Today, most use different grazing areas from year to year so that grazed areas have time to recover. Ranchers and sheepherders also take steps to keep their cattle and sheep on the move so that they do not linger in any one area long enough to eat all the grass. Because they have grazing rights on the federal lands, most ranchers and sheepherders realize that it is in their interest not to overgraze. Doing so would only reduce the land's value to them in subsequent years. Also, ranchers who allow their cattle to overgraze risk being fined and their allotment reduced the following year. As a result of the improved management practices ranchers have employed for most of this century, a 1990 BLM report concluded that federal rangelands are in better condition today than at any previous time in this century.

FIVE OPTIONS

As they wrestle with the question of grazing fees, members of Congress have five options:

Option #1: Increase all grazing fees.—This approach at best would produce only a modest increase in gross grazing fee revenue and would lead to a reduction if the hike was large. In addition, it would increase expenses to the federal government and reduce income tax collections. On balance, the government probably would lose money by raising fees.

Option #2: Reduce grazing fees.—It is possible that even the current fee level is too high. The federal government might actually be better off charging a lower fee if the 20 percent of federal grazing land now idle became grazed.

Option #3: Increase fees only on better quality land and reduce them on poorer land.—This would be the fairest and most efficient option as long as the federal government continues to own lands used for grazing. The advantage of this option is that, if the government were able to implement it, the fee would be based more accurately on the value of each parcel. The government then would collect more revenue on the few parcels of lands for which it currently undercharges, and it also would collect revenue from some of the 20 percent of rangelands that currently produce no revenue because the current fee is too high. Unfortunately, this option may have an Achilles' heel. The administrative cost of determining the correct fee for each of the federal government's 318 million acres of rangeland could exceed the potential increase in revenues.

Option #4: Privatize the federal rangelands, subject to existing private rights.—This is, in principle, the most attractive option. Privatization of the federal government's extensive land holdings could generate billions of dollars of revenue that could then be used for deficit reduction. Alternatively, the government could use the sale proceeds to acquire more environmentally sensitive lands elsewhere, such as wetlands or other critical wildlife habitat, thereby offsetting the current budget cost of land acquisition. Once the rangelands were privately owned, market forces would determine the proper mix of agricultural and recreational uses—and the proper fees—for each individual parcel of land. Unfortunately, this option is politically impractical at this time.

Option #5: Keep the grazing fees at their current level.—Congress simply could renew the current grazing fee schedule based on the formula agreed to in 1978. While imperfect, that formula was the result of a compromise between the government, ranchers, and environmentalists, and is about as good as any formula Congress is likely to come up with. Moreover, the $52.3 million shortfall calculated by the Forest Service and BLM included costs which have nothing to do with administering the grazing program. In fact, it appears that the government makes a slight profit on the program. No case has been made for a hidden subsidy that implies the fees should be raised.

Of these options, privatization would be best, but it would not be politically feasible at this time. If lands remain in federal hands, it would be best to have the fee vary with the quality and location of the land—provided that the administrative costs of determining the correct fee for each parcel would not exceed the increased revenue. But it probably would. In this case, Congress should either lower the fees or else make permanent the formula that was adopted in 1978. Certainly, fees should not be raised until new studies are available that are free from the fatal flaws that plague the 1986 report and its update.

CONCLUSION

The controversy and confusion over how and at what level to set grazing fees just serves to illustrate the difficulty of setting a fair and market-responsive fee when government owns the land. The checkerboard pattern of private and public lands established in the West complicates an already confused legal situation by making it difficult for ranchers to survive without grazing livestock and using water on adjacent government lands.

At a time of high federal spending and deficits, policy makers understandably want to cut a perceived subsidy. But the $52 million above fee receipts spent by the federal government on administering grazing lands is not really a subsidy to ranchers at all. Most of the administrative costs would be incurred even if no grazing were permitted, and the seemingly low fees actually reflect the quality of the land and the extra costs incurred by ranchers when they use the federal land.

Privatization Solution.—If the federal government wishes to resolve the dispute over fees, and to raise money to reduce the federal deficit, it should sell the rangelands to

[11] Obermiller, testimony of July 13, 1992, *op. cit.*, p. 7.

[12] For a brief discussion of these episodes, see *Public Lands Grazing Fees; A White Paper*, published jointly in 1991 by the Public Lands Council, the American Farm Bureau Federation, the Association of National Grasslands, the American Sheep Industry Association, and the National Cattlemen's Association, pp. 10-11.

private owners. If any of the lands in question are especially sensitive or environmentally valuable, appropriate conservation easements could be attached. This would ensure that the land is put to its best use and is best cared for without government expense.

When dealing with the issue of private uses of federal lands, it is important to remember that the relationship of rancher to the federal land is not that of a renter so much as that of a custodian whose family has cared for the land for generations. The federal government always has retained basic ownership, but it has passed on other, more limited forms of ownership to adjacent landowners whose ranching operations require full use of the federal lands. Unless policy makers want to put an end to ranching in the West, grazing fees should not be raised.

WILLIAM G. LAFFER III,
McKenna Fellow in Regulatory and Business Affairs.
JOHN SHANAHAN,
Policy Analyst.

Mr. SYMMS. In light of these reports, it is difficult to see how the current grazing fee gives public rangeland grazers any great advantage over their private land competitors.

As for the argument that cattle are abusing the public lands, I'd first respond that raising the grazing fee is an awfully poor way to address that problem even if it were the case, which it isn't. Raising the grazing fee serves no land management purpose. Rather, it merely devastates the hostage local economy.

I know of no expert, no rational analysis, and for that matter, no reasonable person who can maintain with a straight face that by making ranchers poor, driving them into bankruptcy, leading their local banks into insolvency, and generally undermining the entire economy of their communities, you will achieve the goal of better management of public rangelands. For all the talk of "cattle abusing the range," none of it is an argument for raising the grazing fee.

Worse, eastern Senators and big environmental groups apparently have no idea what the western rangelands were like before ranching came. For most part, the West was a big desert. Ranchers brought water to surface in the last 100 years and literally turned the desert into the grasslands and prairies we see today. One region of my State is called the Magic Valley because the ranchers and farmers used irrigation and wells to turn the desert into a green productive region of our Idaho.

Partly because of ranchers and the water they provide to wildlife, elk and deer populations are booming in the West. Without ranchers, there will be no water. Without the water the rangeland will again because a desert.

So, I reject the argument that grazing is not compatible with sound range management. In fact, when it comes to supplying water for wildlife grazing is sound range management. Two reports address this question. They are the Bureau of Land Management's report entitled "State of the Public Range," and a pamphlet prepared by range biologists at the University of Idaho and the University of Arizona, entitled, "Seven Myths About Livestock Grazing on Public Lands." Both documents support the statement that "our public rangelands are currently in the best shape they've been in this century."

Mr. President, the Senators from Vermont and Ohio could not convince the Senate to support a similar amendment last year. I am probably not the first Senator to remind my colleagues that 60 of us voted to table a similar amendment last year. Since then, even more information has weighed in to suggest that grazing fees on Federal lands should not be raised.

So, the case for a dramatic increase in grazing fees has failed to be made effectively in the U.S. Senate. I would again urge my colleagues in the Senate to oppose the Jeffords-Metzenbaum amendment to increase grazing fees in this appropriations bill.

Mr. DECONCINI. Mr. President, I rise today in strong opposition to the Jeffords-Metzenbaum amendment. This amendment will devastate the cattle industry in my State by raising grazing fees. This would have a disastrous effect on the economy of rural Arizona.

Most of the 3,700 Arizona ranchers who graze livestock in Arizona on public lands operate small, family-owned operations. They depend on Federal grazing lands for their livelihood. If the Jeffords-Metzenbaum amendment passes, many of these small operations will be forced to shut down due to this artificial increase in their operating costs.

To illustrate my point, I would like to point to a map of my State and a couple of charts comparing the land ownership of Arizona and that of one of the authors of the amendment, Senator JEFFORDS. As you can see, only 17 percent of Arizona land is privately owned. This land is indicated on the map by the white area. Pointing to the charts, in Vermont, you can see that almost 90 percent of the land is in private ownership. Ohio is in a similar situation with respect to amount of private land available to the citizens of the State. The bottom line is that the constituents of these two Senators can make a living off the land in their State. However, because of the limited amount of private land in Arizona, virtually all of the ranchers in my State must use public lands for grazing. The Jeffords-Metzenbaum amendment would have the effect of driving ranching off Federal lands and Arizona's Ranchers would have nowhere else to go but out of business.

Mr. President, those that support the amendment argue that because only 2 percent of the cattle in this country are grazed on public lands, we should raise the fees on these ranchers higher than economics truly warrant. That logic is similar to saying that because only 2 percent of the milk produced in this country comes from Vermont, we should eliminate dairy price supports. It does not make sense. For the information of my colleagues, 63 percent of the cattle produced in Arizona are grazed, at least part of the year, on public range lands. Livestock alone contributes almost three quarters of a billion dollars annually to Arizona's economy. Again, if the Jeffords-Metzenbaum amendment becomes law, this would cease.

There are other compelling reasons to block the Jeffords-Metzenbaum amendment. Practically speaking, the pattern of State lands interspersed with Federal lands in Arizona makes it difficult to separate the two ownerships from practical ranching.

Economically, according to figures from the Arizona land department, there would be a potential loss of $1.7 million in State land grazing revenues to the State land trust. A large portion of these monies go directly to State aid for the funding for K–12 public education. Mr. President, any revenues losses for public school in these economic hard times cannot be tolerated.

The current grazing fee formula was established by bipartisan approval under the Carter Administration and later extended under President Reagan by Executive order. It is my understanding that the Bush administration also supports the current formulation. The current system of determining grazing fees is based on market conditions and fluctuates, up or down based on changes in market variables. Over the past years, Federal grazing fees have risen from $1.35 per animal unit month [AUM] to $1.81 per AUM, and have been as high a $2.31 per AUM.

The Jeffords-Metzenbaum amendment raises suspicions in my mind as to its intent. I believe that the motivation is not to raise revenues, but instead it is an effort to eliminate livestock grazing on western public lands. I say this because the fiscal arguments used by the proponents of the amendment are simply not supported by the facts. A major argument for the amendment being offered by the Senators from Vermont and Ohio is that the current grazing fee is an unfair subsidy for public land ranchers. As evidence of this, proponents of the amendment attempt to demonstrate that there is a disparity between the fees paid by ranchers who graze their herds on private range and those who graze on public lands. This rationalization is intellectually bankrupt.

As many of my distinguished colleagues know, ranchers leasing on public range lands are required to pay for and build improvements such as fences, roads, and waters on the lands they lease.

On private lease ranges, these improvements are provided for by the les-

sor. Ranchers on public rangeland must also contend with higher cattle death-rates due to predators as well as higher transportation costs. Combine these additional costs with the fact that on private rangeland, ranchers can graze virtually an unlimited number of cattle. On Federal land, the government strictly limits the numbers. As a result the cost of grazing on Federal lands is comparable to the cost of grazing on private land. Mr. President, Federal grazing permit holders are not being unfairly subsidized.

The proponents of the amendment also argue that the costs of administering the grazing program are greater than the fees it generates. Again, blanket statements such as this are made without checking the facts. The BLM estimates that its cost to administer is $1.66 per AUM. Thus the government is making a profit of 31 cents per AUM. Proponents of the bill also contend that livestock grazing is adversely impacting wildlife habitat. While there is no question that some public lands were overgrazed in the past, rangeland experts from a number of universities and Federal land agencies agree that the public rangelands are in better condition today than anytime this century. As evidence of this, one need only look at the soaring numbers of big game animals on public range land. Mr. President, according to the BLM, big game populations since 1960 have increased dramatically—782 percent for elk alone. One can give a great deal of the credit to ranchers for this. More than just cattle drink from the waters ranchers have constructed.

Mr. President, I ask my colleagues to reject the Jeffords-Metzenbaum amendment.

Mr. McCAIN. Mr. President, I rise in strong opposition to the Jeffords amendment. This proposal to increase the grazing fee for public lands by 25 percent is another misguided attempt to unfairly penalize ranchers utilizing public lands. Increasing the grazing fee to $2.40 per animal unit month would undoubtedly cause undue hardships, bankruptcies, and economic decline in hundreds of rural communities in the Western United States.

There are a host of reasons to oppose this arbitrary increase in the grazing fee. First and foremost, it is unfair to the many hardworking families of modest means who depend on public lands, in whole or in part, to graze their cattle. The average income of ranchers who use public lands is $28,000 per year. I would hope that the Senate will not act rashly and single out these families for a possibly devastating grazing fee increase.

It is simply inaccurate to directly compare the fee for public lands with the grazing fee on private lands, and the sponsors of this amendment know it. Ranchers who graze their cattle on public lands in the West are responsible for maintaining roads, establishing fencing and water sources that lessors of private lands are not.

Furthermore, the current, grazing fee formula is already adjusted on an annual basis, according to the price of beef and the cost of production. When ranchers receive a better price for their cattle on the open market, they pay more into the U.S. Treasury. When times are lean, the grazing fee may decrease. This formula, enacted by the Public Rangelands Improvement Act [PRIA] of 1978, should not be undermined by a cursory swipe at ranchers without careful evaluation by this body.

I would view with interest recommendations to improve or adjust the PRIA formula by the Senate's Energy Committee, which has jurisdiction to evaluate it and suggest changes to the full Senate. The answer is not to jack up the price of grazing fees by 25 percent on an appropriations bill, and I urge my colleagues to decisively reject this amendment.

Such a drastic increase is likely to drive many ranching families out of business, and more economic misery is not something we should turn a blind eye to by passing this amendment. It is estimated that 20 percent of public grazing permits already go unused, and this increase could result in the loss of further revenues to the Federal Government.

I recognize and share the concerns that many Americans have about the conditions of rangeland in the West. We must carefully manage and protect our public lands so that they remain suitable for a variety of recreational and economic uses. If there are areas where overgrazing is occurring, then Federal land management officials should step in and restore sustainable practices.

If we truly have resource problems, let's remedy those specific situations with targeted land management strategies. It is worth noting that last year, the Director of the Bureau of Land Management testified before the House of Representatives that our public rangelands are in the best shape of this century. Let's not unjustifiably price ranchers off public lands.

Mr. President, I call on Members of the Senate to recognize the importance of a reasonable grazing fee to the economic viability of ranchers in Arizona and throughout the West. I urge my colleagues to defeat the Jeffords amendment.

Mr. JEFFORDS. Mr. President, will the Chair advise me whether anyone other than myself has time at this point?

The PRESIDING OFFICER. The Senator from Vermont has all the remaining time.

Mr. JEFFORDS. Mr. President, I will close. I do not think I will take all of the 5 minutes.

First of all, with respect to Dr. Obermiller: He sent me a proposal last year which he called Elements of a Grand Compromise, September 4, 1991. He recommended the grazing fee this year should be $2.49 per AUM—a figure slightly higher than what I am proposing to you today. The difference, however, is that my fee would apply to the large producers, the 15 percent that have more than 500 cows on their ranches. Dr. Obermiller's $2.49 would have applied to every public lands rancher.

This only applies to the large producers.

Now, we all have to think in terms of 30-second spots. Let me just let you know that if you vote against me you will be voting to give a continued subsidy to three billionaires. Let me give you their names: David Koch, Koch Industries; David Packard of Hewlett-Packard; Gordon Peter Getty. These three or their companies that hold permits and will be getting a subsidy at a time our deficit is booming. So too are Getty Oil, Chevron, Anheuser-Busch, Utah Power & Light, Japanese-owned Zenchiku Land & Livestock, Metropolitan Life, and the Mormon Church. So you will have to respond to that.

Now, what is the difference between this year and last year? Last year, we had a proposal about one-half of what the House approved, which was around $9 per AUM. Ours was around $4.50. So if you want to differentiate how you voted last year and this year, there is a very substantial difference. This year we have a 1-year proposal, only for producers with more than 500 head of cattle, and just a boot up to $2.40, which is the level—in nominal dollars—it was 12 years ago, in 1980. Now, how many of us would love to be paying the same rent that we paid back in 1980?

But also remember that we are talking about 15 percent of the 2 percent of the producers of beef in this country that hold grazing permits. Even out West, they represent fewer than 20 percent of the producers. The other 80 percent are paying fair market value or a value established by the States.

Why am I saying this is very important to you? Why am I doing it? Why is it only for 1 year? So they will have to do something this year. They will have to end this grazing subsidy some way. This is the only way we will force them to do something, to compromise. They will have a floor they cannot go below, and that is my amendment. So they will, at least, have to come up for 1 year.

That is all we are asking here; to make them do something. They have been telling us they would do something for years now. They have not done anything. We have had study after study; study after study torn apart. And where are we? Right back to another study. The time for study is over.

Study the budget if you want. Study the deficit. Can you defend this rent freeze from 1980 for 2 percent of the producers?

Let me end by rereading from the Montana Livestock Journal report. This journal reported that the majority of Montana private land ranchers surveyed favor a Federal grazing fee increase. Half expressed support for awarding grazing fee permits on a competitive bid basis.

You have an opportunity to help here, to help end this dilemma. Sure, I know the western Senators cannot do it in their own States. So it is up to us, Members from the other States, the 34 States that do not have these permits to say yes, you have to join the real world; you have to do your part to bring this deficit under control.

It is a small bit, and it does not affect the small farmer. But if we cannot do things like this, how can we ever get this deficit under control? I do not see how.

I believe it is important for us to help the Westerners along, push them along to a reasonable increase which will not reduce the number of people grazing their livestock on public lands. The figures are definite on that. What the amendment will do is to allow the permitters to have the feeling they are not taking advantage of the Federal Treasury.

Mr. President, I yield the floor.

Mr. BYRD. Mr. President, I believe that consumes all of the remaining time on the amendment. I therefore will move to table. I do so apologetically to the distinguished Senator. He is a fine Senator. But this matter has been discussed at great length last year and it was a decisive vote at that time. So in order to move the matter along, I reluctantly will move to table, and do so. I ask for the yeas and nays on the motion.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to table the amendment of the Senator from New Hampshire. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. FORD. I announce that the Senator from North Dakota [Mr. BURDICK], the Senator from Louisiana [Mr. BREAUX], the Senator from Tennessee [Mr. GORE], and the Senator from Iowa [Mr. HARKIN], are necessarily absent.

Mr. SIMPSON. I announce that the Senator from Utah [Mr. HATCH] is absent due to a death in the family.

I further announce that the Senator from North Carolina [Mr. HELMS] is absent due to illness.

I further announce that, if present and voting, the Senator from Utah [Mr. HATCH] and the Senator from North Carolina [Mr. HELMS] would each vote "yea."

The result was announced—yeas 50, nays 44, as follows:

[Rollcall Vote No. 177 Leg.]

YEAS—50

Adams	Dole	Murkowski
Baucus	Domenici	Nickles
Bentsen	Durenberger	Packwood
Bingaman	Ford	Pressler
Bond	Garn	Pryor
Boren	Gorton	Reid
Brown	Gramm	Seymour
Bryan	Grassley	Shelby
Burns	Hatfield	Simpson
Byrd	Heflin	Specter
Cochran	Inouye	Stevens
Conrad	Johnston	Symms
Craig	Lott	Thurmond
Danforth	Mack	Wallop
Daschle	McCain	Warner
DeConcini	McConnell	Wirth
Dodd	Mikulski	

NAYS—44

Akaka	Jeffords	Nunn
Biden	Kassebaum	Pell
Bradley	Kasten	Riegle
Bumpers	Kennedy	Robb
Chafee	Kerrey	Rockefeller
Coats	Kerry	Roth
Cohen	Kohl	Rudman
Cranston	Lautenberg	Sanford
D'Amato	Leahy	Sarbanes
Dixon	Levin	Sasser
Exon	Lieberman	Simon
Fowler	Lugar	Smith
Glenn	Metzenbaum	Wellstone
Graham	Mitchell	Wofford
Hollings	Moynihan	

NOT VOTING—6

Breaux	Gore	Hatch
Burdick	Harkin	Helms

So the motion to table the amendment (No. 2905) was agreed to.

Mr. BYRD. Mr. President, I move to reconsider the vote.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 2907

(Purpose: To prohibit the use of funds to purchase, procure, or upgrade computers for the Forest Service prior to the implementation of reforms of the field structure and organization of the Department of Agriculture)

AMENDMENT NO. 2908

(Purpose: To increase funding for general maintenance and operations for the Bureau of Land Management, with an offset)

Mr. BYRD. Mr. President, I send 2 amendments to the desk, the first for Mr. BOND, and the second for Mr. WALLOP. I ask unanimous consent they be considered, agreed to en bloc, the motions to reconsider be laid on the table. These have been agreed to on both sides. Mr. NICKLES and I present them together.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WALLOP. Mr. President, I am submitting this amendment in agreement with the Senators from Montana, Idaho, and Wyoming. It is our intention to transfer $148,000 from the National Park Service Budget, park management/resource management account found on page 97 of the National Park Service fiscal year 1993 budget to the Bureau of Land Management general maintenance and operations account.

The amendments considered and agreed to en bloc are as follows:

AMENDMENT NO. 2907

On page 66, between lines 3 and 4, insert the following new paragraph:

None of the funds made available under this Act may be used to purchase, procure, or upgrade computer hardware or software used by an officer or employee of the Forest Service prior to the implementation, by the Secretary of Agriculture, of reforms of the field structure and organization of the Department of Agriculture.

AMENDMENT NO. 2908

On page 2, line 12, strike "545,517,000" and insert "$545,665,000".

On page 18 line 24, strike "989,330,000" and insert "$989,282,000".

Mr. BYRD. Mr. President, we have two amendments left. Senators are discussing those two amendments at the moment. They may be disposed of en bloc, hopefully, if they can be agreed to and accepted.

So at this point let me thank the staffs on both sides. There was excellent, excellent work on the part of the staffs. And I thank Senators, those Senators who had amendments listed and who agreed not to call up those amendments.

Mr. President, while Senators are discussing the two remaining amendments, and hopefully bringing the matter to a close quickly, I yield the floor if the majority leader wishes to make any announcements or any Senator wishes to speak.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized.

Mr. NICKLES. Mr. President, I wish to just use this moment to say we are very close to finishing this bill. Hopefully, we will be voting on final passage in just a moment. We have two additional amendments. We think both of those amendments will be taken care of without a rollcall vote. I am not sure whether or not we will have a rollcall vote, recorded vote on final passage. My guess is we probably will. We may be able to do that in just a few minutes. It is my hope we can.

In the meantime I would like to thank the chairman of the subcommittee, also chairman of the full committee, Senator BYRD, for his leadership on this bill.

I might again repeat to my colleagues this bill has an increase in appropriations of less than 1 percent and that if you took out the increases for the Indian Health Service, this bill is a no-growth bill. It is basically the same amount of appropriations as we have had in fiscal year 1992. So I think the Senator from West Virginia has shown great leadership in saying he is willing to make some reductions. I think this bill has less growth than probably any other bill we have taken up on the floor of the Senate. So I compliment

him for that task. And also for his leadership.

We did not do a lot of things that a lot of people wanted us to do. We did not fund any visitors centers and we had lots of requests. We did not fund a lot of requests that were made, both to this Senator and to the Senator from West Virginia. That is not easy to do. So I compliment, again, the Senator from West Virginia.

I would also like to compliment the Senator's staff, Sue Masica has done an outstanding job, and Cherie Cooper of my staff—who have just been really working tirelessly to put this bill together. I think they have done an outstanding job as well.

I really encourage Senator BUMPERS and Senator STEVENS to see if we cannot finalize that amendment.

I have no objection to Senator STEVENS' amendment. I think it should be agreed upon. Then we have one additional amendment that I believe Senator REID was trying to work out. I think we are very close to getting it together. We would like to agree to both of those amendments by unanimous consent and go to final passage of the bill in just a few moments.

Mr. BYRD. May I ask, does any Senator wish to have a rollcall on final passage? Does any Senator wish a rollcall on final passage?

Mr. STEVENS. I say to the Senator from West Virginia, I do not know what the disposition of the other Senator is, as to what the objection is if there is one. I am waiting to hear if there is an objection.

Mr. BYRD. An objection to what?

Mr. STEVENS. To my amendment.

Mr. BYRD. I beg the Senator's pardon.

Mr. STEVENS. I would be pleased to offer that amendment and to explain it, and to ask the Senator from Arkansas if he intends to oppose it.

Mr. BYRD. I suggest the Senator do that.

AMENDMENT NO. 2909

(Purpose: To authorize a land exchange)

Mr. STEVENS. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Alaska [Mr. STEVENS] proposes an amendment numbered 2909.

Mr. STEVENS. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Insert at the appropriate place in the bill:

"Notwithstanding any other provision of law, the Secretary of the Interior is authorized to exchange a property, located at 132–140 Manor Avenue, Anchorage, Alaska, for property that meets requirements of the United States Geological Survey located in Anchorage, Alaska, owned by AHPI/Municipality of Anchorage. This exchange will be based on terms and conditions determined by the Secretary to be in the best interests of the United States Government. Either party is authorized to equalize the value of the properties involved through payment or receipt of cash or other consideration.".

Mr. STEVENS. Mr. President, this amendment authorizes a lands exchange between the U.S. Geological Survey and the Anchorage Historic Properties. That is the Anchorage, AK, member of the National Trust for Historic Preservation.

That entity has asked me to offer this amendment because of this circumstance. The United States Geological Survey owns the old Wireless Building in Anchorage. It is currently used to store rock samples.

This historical properties group wants the Wireless site and it proposed to purchase the USGS a building in Anchorage more suitable for storage of the USGS samples.

I want to point out to the Senate that all communications to and from the territory of Alaska went through this building before modern satellites linked Alaska communications networks. It was part of the old Alaska communications system, operated by the U.S. Army. It is now under the control of the USGS. My amendment would authorize the exchange on an equal value basis.

I know of no opposition in the State of Alaska to this. I have raised it in the committee, but there was a request that this matter be examined and that is why it has come to the floor.

I said I know of no alternative to this. The Federal property management regulations do not permit the exchange of this property because it will be necessary, as the amendment points out, for one party or the other to equalize the value of the property through the payment or receipt of cash or other consideration, because the values, the property values, are not equal and cannot be made equal except through that provision that is in this amendment.

The municipality of Anchorage is comfortable and supports this exchange. The USGS has informed us they are satisfied with the arrangement in Alaska and at headquarters.

As I have indicated, the exchange cannot be done without billing Anchorage, and it is necessary for us to preserve this very historic wireless station as a historic property. It is the intention of a member of the National Trust for Historic Preservation to ask it be listed in the National Register of Historic Places when it is placed in their ownership.

I would like to have printed in the RECORD the letter I received on April 3 of this year, from the executive director, Kerry I. Hoffman, I believe it is Miss Hoffman, for the Anchorage Historic Properties, asking that this amendment be offered.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

ANCHORAGE HISTORIC PROPERTIES, INC.,
Anchorage, AK, April 3, 1992.

Hon. TED STEVENS,
U.S. Senate, Washington, DC.

DEAR SENATOR STEVENS: Anchorage Historic Properties, Inc., a non-profit historic preservation organization, is interested in acquiring the property on Government Hill in Achorage known as the Wireless Station, as an historic property. A copy of the description from Patterns of the Past, an Inventory of Anchorage's Historic Resources, is enclosed.

The U.S. Geological Survey/Department of the Interior (USGS) currently holds the property, having acquired it from the Department of Defense. The USGS uses the buildings to store mineral samples. They would like to exchange the land and buildings for a 2,000–2,500 square foot storage space. We are looking for appropriate space to meet their needs. The Federal Property Management Regulations do not permit such an exchange of property. This exchange would be in the best interests of the Department of the Interior and AHPI/City of Anchorage. The DOI would obtain a true storage facility and AHPI/City of Anchorage would obtain a facility ideally suited for community use.

We would like you to consider offering legislation to a Department of Defense bill to provide for this exchange. Language similar to the following has been used in the past to complete such exchanges:

"Notwithstanding any other provision of law, the Secretary of the Interior is authorized to exchange a property, located at 132–140 Manor Avenue, Anchorage, Alaska, for property that meets requirements of the USGS located in Anchorage, Alaska, owned by AHPI/City of Anchorage." This exchange will be based on terms and conditions determined by the Secretary to be in the best interests of the U.S. Government. The Secretary is authorized to equalize the value of the properties involved through cash payment or other considerations.

Our goal is to do the necessary restoration to the property and put the buildings back into active use. To this end, we have been working very closely with the Government Hill Community Council, a vigorous neighborhood group, to determine the future use of these buildings. Ideas under consideration at this time include a day care center or a community hall. In addition, we plan to nominate the property for listing in the National Register of Historic Places.

I would be happy to discuss this matter with you and your staff at your convenience. Thank you for your help and interest!

Sincerely,

KERRY I. HOFFMAN,
Executive Director.

Mr. STEVENS. The amendment was provided by that organization.

Mr. BYRD. Mr. President, if the Senator will yield briefly for a unanimous-consent request?

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, I ask unanimous consent that it be in order to accept the Wallop amendment which has already been agreed to, even though it amends a figure previously amended.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Alaska does have the floor.

Mr. STEVENS. I would like to confer with my friend from Arkansas. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 2910

Mr. REID. Mr. President, under the agreement previously entered, I have one of the slots the manager of the bill has stated on a number of occasions. I now offer an amendment that has been cleared on both sides, the Bumpers-Reid amendment dealing with bonding.

The PRESIDING OFFICER. Is there objection to laying aside the pending amendment in order to take up this amendment?

Mr. REID. I apologize to the Chair for not having asked that. I ask unanimous consent that the pending amendment be set aside.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Nevada [Mr. REID], for himself and Mr. BUMPERS, proposes an amendment numbered 2910.

Mr. BUMPERS. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the bill, add the following section:

SEC. . NOTWITHSTANDING ANY OTHER PROVISION OF LAW.

(a) FINANCIAL GUARANTEE.—Prior to the commencement of any mineral activities conducted pursuant to the general mining laws causing more than minimal disturbance to the environment, the claimant shall furnish a bond surety, or other financial guarantee, which may include, but not be limited to, the use of bond pools, in an amount as determined by the Secretary of not less than $200 or more than $2,500 per acre, conditioned upon compliance with the requirements of this Act and other applicable laws and regulations. Regardless of the financial limits of the preceding sentence, the bond, surety, or other financial guarantee shall not be less than the estimated cost to complete the reclamation of the disturbed land.

(b) REVIEW.—The Secretary shall review the bond, surety, or other financial guarantee for sufficiency not less than every five years.

(c) PHASED GUARANTEES.—The Secretary may reduce proportionately the amount of bond, surety, or other financial guarantee from determination that any portion of reclamation is completed in accordance with this Act and applicable laws and regulations.

(d) RELEASE.—The Secretary shall provide for public notice prior to any reduction in, or final release of, a bond or other financial guarantee.

The PRESIDING OFFICER. The Senator from Arkansas is recognized.

Mr. BUMPERS. Mr. President, this is an amendment that is not totally satisfying to me. It is a bonding requirement for miners. As I pointed out yesterday in the debate, BLM, the Bureau of Land Management, only requires bonds in 22 percent of the cases where they issue permits to mine. The Forest Service requires bonding in about 82 percent of their cases.

I think everybody agrees in this body, that all miners who are issued permits to mine hard rock minerals on Federal lands should put up a bond to reclaim the property.

This amendment is based on Montana law which has worked very well for them. It is almost verbatim their law. I personally do not think it is quite stringent enough, and I am offering it with my good friend from Nevada with the understanding that I will have an opportunity to look it over more closely before we go to conference with the House.

At that time, if I decide it is better to go forward with it, I will insist that the House recede to us on it. If it is less than I think we ought to have, and I think we are going to wind up stuck with something that is not as it ought to be in order to get the land reclaimed, then, of course I will insist that we drop it and we try again next year. Something is not always better than nothing, despite contentions to the contrary.

But, in any event, I am willing to go along with this, as is the Senator from Nevada. We will work together. He has agreed he will work closely with me and I will work closely with him. I hope the Senate adopts the amendment.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the amendment.

The amendment (No. 2910) was agreed to.

Mr. STEVENS addressed the Chair.

The PRESIDING OFFICER. The Senator from Alaska.

AMENDMENT NO. 2029, AS MODIFIED

Mr. STEVENS. Mr. President, I have had further conversation with the Senator from Arkansas, and I will send to the desk a modification of the amendment I have offered. It will add the clause that "this transaction shall be accomplished pursuant to section 206 of the Federal Land Policy and Management Act of 1976" with the appropriate citation to the U.S. Code.

The Senator from Arkansas has also indicated he wants to reserve judgment in the conference as to whether or not this language should be maintained in view of the policy concerning other land exchanges.

I know of that policy and I have said to my friend I would not offer this if it were not for the fact it is the opportunity to preserve one of the historic old buildings in Anchorage for our entity, which is the member of the National Trust for Historic Preservation. If this is not done, we may well lose that opportunity to preserve this property.

So I send this modification to the desk. It is our intent clearly stated in that law, and I have stated previously before the Senator from Arkansas came back from the agriculture conference, that this amendment does authorize this exchange only on an equal value basis.

It is necessary because I am informed the exchange cannot be done without bill language that authorizes this type of equalization under the circumstances involved that the building is to be acquired. We do not know what the building will be that USGS will select, but they will be required to approve that transaction.

That is also part of the act that the Senator from Arkansas has cited. I am happy to make that addition. I will solicit comments from my friend, but I do ask that the amendment be modified.

The PRESIDING OFFICER. The Senator has a right to modify his amendment.

The amendment, as modified, is as follows:

Proposed language for USGS/Anchorage Historic Properties land exchange:

"Notwithstanding any other provision of law, the Secretary of the Interior is authorized to exchange a property, located at 132-140 Manor Avenue, Anchorage, Alaska, for property that meets requirements of the United States Geological Survey located in Anchorage, Alaska owned by AHPI/Municipality of Anchorage. This exchange will be based on terms and conditions determined by the Secretary to be in the best interests of the United States Government. Either party is authorized to equalize the value of the properties involved through payment or receipt of cash or other consideration. This transaction shall be accomplished pursuant to section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C 1716).".

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. BUMPERS. Mr. President, I just came from conference with the House, which we concluded a moment ago, on Agriculture appropriations. All day long somebody said this is going to be setting precedent; that is inappropriate language on this or we have never done that before. All conferences are very much alike when it comes to that because the truth of the matter is, once you get yours in, then it is inappropriate language if somebody else is doing it on something you do not like. That is just a prefacing way of saying that we have a number of proposed land exchanges before my subcommittee.

I was not familiar with this one until Senator STEVENS showed it to me this evening. He makes a very compelling case, and the rule that I am about to break of my own is that I will not accept these things normally on the floor

without a rollcall vote because it really is not fair to all the other people who have gone through introducing bills, holding hearings, got bills reported out in a timely way and considered in an orderly manner on the floor.

The Senator from Alaska makes a very compelling case that the National Trust for Historic Preservation is involved in this, and they are willing to put up some of their own money and buy a building that Senator STEVENS says is one of the most historically, shall I say, important buildings in the State of Alaska.

I asked him to modify it because the language simply said the Secretary could negotiate this deal in the best interest of the United States.

We never used language like that in our committee. The Federal Lands Policy Management Act which we passed I believe in 1976, section 206 of that bill covers this very kind of thing. So I asked the Senator to amend his bill to say that this exchange will be worked out under the terms of section 206. This means they have to be equal value. It has to be in the best interest of the United States, though that is not a part of the language, and everybody will be happy and we will save a historic building. But I also want to say, just because I just looked at this, I want to reserve the right to insist that the House not recede to us on this if we find it has any real problems with it.

I admire the Senator for trying to preserve a piece of property. That is always commendable. I always want to be helpful, so I will not object to the amendment.

Mr. STEVENS. Mr. President, conditions stated by the Senator from Arkansas are, of course, acceptable to me. I would not offer this if it were not for the special circumstances of historic preservation, because we have not offered, I have a whole series of land exchange amendments that I have not offered to this bill because of the other policy. But I do ask that the Senate consider this amendment at this time.

The PRESIDING OFFICER. Is there further debate on the amendment. If not, the question is on agreeing to the amendment.

The amendment (No. 2909), as modified, was agreed to.

Mr. STEVENS. Mr. President, I move to reconsider the vote.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. STEVENS. Mr. President, let me thank my friends for their patience. This was an amendment that was the last one to be cleared, and I do thank them.

Mr. BYRD. Mr. President, the Senate earlier agreed to an amendment by Mr. WALLOP amending a number on page 2, the number appearing on line 12.

I ask unanimous consent that the same number which appears on line 10, page 3, be amended accordingly.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. I wish to express my gratitude to the following staff members:

Barbara Videnieks;

Full committee, majority staff: Jim English, Mary Dewald, Anita Skadden;

Full committee, minority staff: Keith Kennedy;

Interior Subcommittee, majority staff: Rusty Mathews, Kathleen Wheeler, Ellen Donaldson, Larry Benna, on detail from BLM, Sue Masica;

Interior Subcommittee, minority staff: Cherie Cooper, Ginny James;

Appropriations Committee support staff: Nancy Brandel, Rheda Freeman, Jack Conway, Bob Putnam, Jodi Capps, Richard Larson, Bernie Babik, Bob Swartz, Clarence Erney, and P. Joe Thomas.

Mr. WELLSTONE. Mr. President, I rise to speak about four very important programs funded through the Department of Energy: the Low-Income Weatherization Program; the Institutional Conservation or Schools and Hospitals Program; the State Energy Conservation Program; and the Energy Extension Service.

These four programs produce significant energy efficiency benefits for all Americans, from the very poor in our society to small businesses and agriculture. With a comparatively small Federal commitment of $240 million, these programs deliver important services which help keep our national energy costs down. These programs make our industry more competitive and allow low-income people to live in homes not unduly exposed to the cold of winter in my home State, and the heat of summer in the South.

Mr. President, this body has proposed a 9-percent cut in these four programs below last year's funding level. Along with my colleague from Vermont, Senator JEFFORDS, I was prepared to offer an amendment which would have restored roughly half of this cut by transferring funds from increases in administrative expenses and program management accounts. I will ask unanimous consent that a copy of that amendment be inserted in the RECORD immediately following these remarks.

I do not intend to offer this amendment. After speaking with the distinguished senior Senator from West Virginia, I have every confidence that my concerns will be addressed in conference. I have engaged in a colloquy with my distinguished colleague from West Virginia and chairman of the Appropriations Committee, and despite the very tight allocations of this bill, he has indicated a desire to try to restore these programs to their 1992 funding levels, which I deeply appreciate.

These programs have already been cut severely, from $558 million in fiscal year 1979 to their $240 level today. If these programs had been frozen at their 1979 funding level, with inflation we would be looking at funding of over $1 billion today. We are sacrificing our future when we cut energy conservation funding. These programs have positive impacts from Maine to Hawaii.

Support for these programs is both strong and bipartisan. Along with 46 of my colleagues I joined in urging a 25-percent increase in these programs for fiscal year 1992. I will ask unanimous consent that this letter also be printed in the RECORD following these remarks.

Energy conservation represents an investment in both economic development and international competitiveness. For example, when our trading partners, such as Japan and Germany are far more efficient than we are, our manufacturing and industrial sectors suffer by paying an energy tax in the price of their products.

This body recently passed a comprehensive energy bill calling for expanded activities in energy efficiency, renewable energy, and a variety of other programs. These four programs are complementary to that legislation, and providing them with increased funding would support energy efficiency efforts in sectors, such as low-income housing, which unquestionably need expanded support. Moreover, increased funding for State energy offices is essential if they are to meet their expanded responsibilities under the national energy efficiency legislation recently passed by the Senate.

Mr. President, I wish to express my deep appreciation for the support which my distinguished colleague from West Virginia has expressed. I urge all of my colleagues to join in supporting increased funding for these four programs.

I ask unanimous consent that the material to which I referred be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

AMENDMENT INTENDED TO BE PROPOSED BY MR. WELLSTONE FOR HIMSELF AND MR. JEFFORDS TO THE COMMITTEE AMENDMENT

On page 106, between lines 11 and 12, insert the following new section:

SEC. 319. (a) Notwithstanding any other provision of this Act, the amounts otherwise provided in this Act for the following accounts and activities are reduced by the following amounts:

DEPARTMENT OF THE INTERIOR

DEPARTMENTAL OFFICE

OFFICE OF THE SECRETARY

SALARIES AND EXPENSES

$2,271,000.

OFFICE OF THE SOLICITOR

SALARIES AND EXPENSES

$340,000.

CONSTRUCTION MANAGEMENT

SALARIES AND EXPENSES

$45,000.

NATIONAL INDIAN GAMING COMMISSION

SALARIES AND EXPENSES

$290,000

RELATED AGENCIES
DEPARTMENT OF ENERGY
FOSSIL ENERGY RESEARCH AND DEVELOPMENT
Administrative expenses, $3,239,000.
NAVAL PETROLEUM RESERVE
Administrative expenses, $389,000.
EMERGENCY PREPAREDNESS
$150,000.
STRATEGIC PETROLEUM RESERVE
Management expenses, $878,000.
OTHER RELATED AGENCIES
NATIONAL CAPITAL PLANNING COMMISSION
SALARIES AND EXPENSES
$1,325,000.

(b) Notwithstanding any other provision of this Act, under the heading "ENERGY CONSERVATION", under the heading "DEPARTMENT OF ENERGY", the amount provided for energy conservation activities is increased by $4,700,000 and the amount provided for energy conservation programs (as defined in section 3008(3) of Public Law 99-509 (15 U.S.C. 4507(3))) is increased by $9,094,000.

(c) Notwithstanding any other provision of this Act, no funds made available under the heading "ENERGY CONSERVATION", under the heading "DEPARTMENT OF ENERGY", may be used to increase the management expenditures for any program under the Office of Technical and Financial Assistance above the amount made available for fiscal year 1992 or to increase the expenditures for general policy and management above the amount made available for fiscal year 1992.

COMMITTEE ON
ENERGY AND NATURAL RESOURCES,
Washington, DC, June 10, 1992.

Hon. ROBERT C. BYRD,
Chairman, Committee on Appropriations, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: We are writing to urge your continued support for funding for the Department of Energy's State and Local Assistance Programs (SLAP) at a level of $309.8 million for FY 93. The $309.8 million funding level for the four SLAP programs—the Low Income Weatherization Assistance Program (WAP), State Energy Conservation Program (SECP), Energy Extension Service (EES), and Institutional Conservation Program (ICP)—provide crucial Federal funding for State and local energy conservation services to low-income households, non-profit schools and hospitals, small businesses, and farmers. We believe that these programs are consistent with the goals of the comprehensive national energy strategy currently being considered by Congress, as well as the recently enacted "State Energy Efficiency Programs Improvement Act of 1990" (Public Law 101-440).

The increase in funding for these programs is important in several respects. Public Law 101-440 reduces burdensome restrictions and increases the flexibility of State and local agencies to tailor SLAP programs to meet their individual needs, thereby allowing the money to be used to greatest advantage. In addition, advances in energy efficiency and renewable energy technologies have made possible dramatic improvements in the energy saving potential of the SLAP programs. Increases in the number of eligible energy efficiency and renewable energy technologies, as well as changes in program implementation, will allow the SLAP programs to provide an even greater level of benefits to program recipients.

In addition, because of the large number of eligible recipients of SLAP programs who are not receiving benefits, additional increases in program funding are warranted. This disparity between need and available funding resources is especially serious since oil overcharge funds and set-asides from the Low Income Home Energy Assistance Program to supplement appropriations have been declining.

It is encouraging to note the President's recent decision to request funding for the SLAP programs. The President's budget request for FY93 included increases in SECP/EES from $16.2 million in FY92 to $25 million in FY93 as well as funding for ICP at $30 million for FY93. However, requests for WAP were $80 million, dramatically below last years appropriation of $194 million.

The Administration has also proposed a new Partnership Grants Program under SECP to be funded at $20 million. This new program is designed to promote joint venture energy efficiency, alternative fuels and renewable energy projects between Federal, State, and local governments and the private sector. This innovative concept is supported by the States above the basic SECP/EES appropriation.

Given the passage of Public Law 101-440, the funding proportions in the FY92 appropriation, and increases in the President's budget request, we recommend the following funding levels for SLAP programs: WAP—$250 million; EES—$5 million; SECP—$20 million; and ICP—$34.8 million. We also recommend that the SECP Partnership Grants Program be fully funded and that funding be provided for the WAP Incentive Fund at last year's level of $3 million.

The enormous benefits of the SLAP programs are determined by their effectiveness and the amount of funds the programs have to work with. Congress improved the effectiveness of the programs by passing Public Law 101-440. We urge your support in ensuring that these vital programs have the necessary funds to carry out their important mission by increasing the appropriation to the aforementioned levels.

Sincerely,

Timothy E. Wirth, Chairman, Subcommittee on Energy Regulation and Conservation; Daniel K. Akaka; George J. Mitchell; Dave Durenberger, Thomas A. Daschle; Joseph R. Biden, Jr.; J. Robert Kerrey; Dennis DeConcini; Lloyd Bentsen; Jeff Bingaman; Harry Reid; Christopher J. Dodd; Quentin N. Burdick; Jim Sasser; Wyche Fowler, Jr.; Tom Harkin; Bill Bradley; Paul Simon; Kent Conrad; Wendell H. Ford.

Al Gore, Carl Levin, J. James Exon, Charles S. Robb, John D. Rockefeller IV, James M. Jeffords, John Glenn, Claiborne Pell, Herb Kohl, Howard M. Metzenbaum, Richard C. Shelby, Alan Cranston, Richard H. Bryan, Bob Graham, Edward M. Kennedy, Terry Sanford, Paul S. Sarbanes, David Pryor, Max Baucus, Joseph I. Lieberman, William S. Cohen, Daniel K. Inouye, Paul Wellstone, Donald W. Riegle, Jr., Harris Wofford, Frank H. Murkowski, John F. Kerry.

Mr. DOMENICI. Mr. President, I rise in support of H.R. 5503, the Interior and related agencies appropriations bill for fiscal year 1993, as reported by the Senate Appropriations Committee.

I support this bill and thank the distinguished chairman and President pro tempore of the Senate, Senator BYRD, for deleting several House provisions of serious consequence to Western States.

Mr. President, the pending bill provides $12.6 billion in new budget authority and $8.4 billion in new outlays for various agencies of the Department of the Interior, for the U.S. Forest Service in the Department of Agriculture, for the Fossil Energy and Conservation Programs of the Department of Energy, agencies supporting the arts and humanities, and miscellaneous related agencies.

When outlays from prior-year budget authority and other completed actions are taken into account, the bill totals $12.8 billion in new budget authority, with the inclusion of the emergency items.

To fashion its bill within the budget constraints, the subcommittee again considered budgetary practices to minimize the near-term outlays associated with the bill, or proposals to raise fees or increase receipts to the Federal Government.

I thank the distinguished chairman for forgoing proposals to raise fees for grazing on public lands, and keeping the States' share of the administrative costs for the mineral leasing receipt payment at the current level.

The House included in its version of the bill a provision to modify the Mineral Leasing Program to require the deduction of the full cost of administering the program prior to the distribution of mineral leasing receipt payment to the States.

For my home State of New Mexico, this would be a serious blow. Under the House proposal the State of New Mexico would lose approximately $8.7 million in receipts from the current level. All of these funds are earmarked directly for education programs for New Mexico's children.

I join my colleague from Wyoming, Senator WALLOP, in strongly opposing the House provision, which, as currently administered, unfairly burdens the States with costs not solely related to the administration of the Mineral Leasing Program. This proves a great hardship on my home State.

Mr. President, I am pleased that the committee has funded the Interior and Wildland Firefighting Programs at the administration's request.

As the Senate subcommittee so clearly recognizes, a certain level of expenditures for expenses to fight fires can be foreseen. The committee includes $300.6 million which reflects the previous 10-year average for the costs of emergency rehabilitation and wildfire suppression activities for both the Forest Service and the Bureau of Land Management.

The committee has also included $192 million, as requested by the administration, to establish an emergency contingency element. These funds, or any part, will only be available upon a Presidential designation of the funds as emergency requirements for the purpose of the Budget Enforcement Act of 1990.

Mr. President, I have some reservations about the new emergency pest management account established in both the House and Senate bills. The Senate recommends $20 million for this account.

In taking this action, the subcommittee reduces funding for the State and private forestry account of the Forest Service, and frees up such amounts to be spent on other domestic discretionary projects and programs.

The administration strongly objects to this provision because it would preclude the use of funds in the emergency pest management account unless the President declares this spending as an emergency, and thus, outside the spending caps in the budget enforcement act.

Because pest suppression costs can be reasonably anticipated and funded in advance, the Office of Management and Budget would not recommend that the President declare these funds as an emergency.

Mr. President, the subcommittee has also included $14 million in National Park Service operation funds for conversion of the Presidio in San Francisco from a military installation into a national park. The committee has assumed these funds as defense discretionary spending, however, the Office of Management and Budget will score these funds as domestic discretionary spending.

In all, Mr. President, I believe the distinguished chairman of the Senate Appropriations Committee has done all that he can to address the urgent requirements of the Department of the Interior, the Forest Service, the Fossil Energy and Conservation Program of the Department of Energy, and various arts agencies.

I will support the bill as reported, as I did during subcommittee and committee consideration of the bill. I will strongly oppose any attempts to amend this bill to increase grazing fees on public lands.

I will also work in conference to minimize the negative impact of the provisions in this bill on the Western States, including the mineral leasing receipt payments provision, which has such a serious impact on my home State of New Mexico.

I thank the chairman for the review and consideration he gave to the many issues in this bill that I brought to his attention. I appreciate his support for many important programs of particular interest to New Mexico.

I urge the adoption of the bill.

REID AND BUMPERS AMENDMENTS NUMBERED 2882 AND 2881

Mr. SIMPSON. Mr. President, we have visited this issue many times. This is an extremely important issue particularly to the West but, indeed, one which would have serious consequences for the entire country.

The amendment by the Senator from Arkansas would impose a moratorium on the issuance of mining patents. He would affect most significantly the manner in which hard rock minerals are developed in this country.

As the Senator from Alaska so eloquently stated this morning, the 1872 mining law is the last remaining cornerstone of the private-public land ownership relationship which created this noble country. Today, this relationship only exists in the West.

It is a very special relationship and one that you must experience and deal with first hand before you can ever possibly fully understand the dynamics, the benefits and the disadvantages. I trust my colleagues will listen to those of us from the States most affected by this issue.

I would encourage our dedicated and dynamic colleague from Arkansas to accept the invitation from the Senator from Alaska. Before we change the rules that have sustained American mining for over 100 years, the Senator should go out into the land and see and taste and touch the issue as fully as those who know it best see it and feel it.

Land and water and minerals are truly our lifeblood in the West. They are vital to our very survival. The relationship—the interdependency—that exists between private individuals and the Federal resources may be very difficult to understand when you are from a State that has very little public land.

Hard rock mining in the West under the existing mining law continues to be just as important as our original homestead laws. The Senator from Arizona made that point very clearly—and I trust our colleagues heard well what he said. No one should consider the mining law a subsidy for persons dwelling in the West today. This Government had to encourage people to take extreme risks in moving West that they might not have otherwise made, all in order to develop this Nation.

The same continues to be true for the hard rock mining industry. The risks are extreme—both financial and personal—and I think, upon closer scrutiny, we will see that the benefits to the Federal Government from a strong and healthy mining industry are real and would be very much in jeopardy should the proposal offered by our colleague from Arkansas become law.

It is sophistry to carve out a single claim or activity, a particular river or piece of land, or a specific agricultural product, and judge its worth by the revenue it generates for the Federal Government. These resources are all integral components of a much larger picture of our national productivity.

There are indeed some large companies—many foreign owned—that develop important mineral resources. But the vast majority of claimants are individuals. They are citizens who pay local and State taxes—they pay high Federal taxes—and they work doggedly to make a living from an often hard and unforgiving earth. They invest time, labor and money in the exploration and development of minerals that we desperately need in our daily lives. They make improvements to lands that might not occur otherwise.

The discovery of a mineral resource leads to production of that mineral, transportation of the mineral, marketing and sale of the mineral. All of these activities generate needed jobs and revenues for the local, State and the Federal Governments.

We are receiving important benefits from our mineral resources and the Federal Government is getting a pretty good deal from the 1872 mining law. It fits into the social, political, and economic system that we have in the West. The mining law serves a fine purpose and I must ask you to strongly consider the devastating consequences for our States' economies that we in the West will most assuredly have to pay should the Bumpers amendment pass.

PACIFIC YEW

Mr. LAUTENBERG. Mr. President, I rise in support of the fiscal year 1993 Interior appropriations bill, and to commend the distinguished Senate Appropriations chairman, Senator ROBERT C. BYRD, for his outstanding efforts on this bill.

This legislation includes an important provision which parallels a provision of the Pacific Yew Act, which I introduced last month along with several of my colleagues, to govern the forest shrub whose bark is the source of taxol, a promising new cancer fighting drug.

This legislation includes language which permits the Secretary of Agriculture to use moneys received from the sale of Pacific yew from public lands to fund the costs incurred by the Forest Service in harvesting the yew. This provision would help expedite the development of taxol by making available greater quantities of its source, the Pacific yew tree.

Cancer is a disease which touches us all. We may be lucky enough to avoid getting cancer ourselves, but nearly every one of us has a loved one, a friend, or a colleague who has had to deal with battling this debilitating disease. Every year nearly 1 million Americans learn they have cancer. All of a sudden their lives are reduced to hope, percentages, and uncertainty.

I've faced cancer in my own family and know from personal experience the deep and lasting pain it can leave when it steals our loved ones from us. My State of New Jersey ranks fourth in cancer deaths nationwide. And the incidence of cancer is 13 percent greater in New Jersey than the national average. What a terrible waste of human potential. We must respond aggressively to this pressing public health concern.

Scientists say that taxol is the most promising cancer-fighting drug to be developed in the last 15 years. The story of taxol is an interesting one. In 1960, the National Cancer Institute created a natural products program and sought assistance from the U.S. Department of Agriculture to test everything and anything which might provide a cure for cancer.

Things were tested as potential cures that most of us ignore or take for granted: twigs, insects, moss, fungi. Hundreds and hundreds of samples were collected and screened. Hundreds. And only one proved to be a promising cure for cancer in human beings. One.

The promise is called taxol, an extract from the Pacific Yew tree which grows in the old growth forests in the Pacific Northwest. The bark of the Pacific yew tree is the only known source of taxol. Yet, until recently, the yew tree was viewed as a mere nuisance in the way of harvesting valuable lumber. Now the yew is the "tree of hope" for cancer victims of today and tomorrow, many of whom would count hope as their most valuable possession.

The National Cancer Institute has been testing taxol on women who have refractory ovarian cancer for which no other treatment has proven effective. And the results of NCI's clinical trials are very encouraging. NCI has initiated studies on other types of cancer as well and reports that it appears likely that taxol may play a significant role in fighting breast and other types of cancer.

But the major problem with taxol is that there isn't enough of it. The only current source of taxol for clinical trials is the bark of the Pacific yew. It is difficult and time consuming to procure adequate quantities of the drug. To place this in perspective, Mr. President, it takes the bark of three 100-year-old yew shrubs to treat a single cancer patient. It takes 750,000 pounds of dried yew bark to get enough taxol for about 12,000 patients.

To help ensure rapid development, testing, and approval of taxol, the National Cancer Institute signed a cooperative research and development agreement with Bristol-Myers Squibb Co. which is responsible, under the agreement, to develop and provide an adequate supply of taxol to NCI for clinical trials. An important component of that agreement calls for Bristol-Myers Squibb to research alternative sources for the drug. The company has invested considerable resources in developing alternative sources for the drug including extract from yew needles, plant tissue culture, genetic engineering, tree planting and total chemical synthesis. NCI estimates that within 5 years it will no longer be necessary to rely on yew bark as a source for taxol.

Mr. President, I have read accounts of yew trees being left to rot and burn after a logging operation. We must treat these trees like the precious resource that they are. We cannot afford to let any more time elapse without increasing the protection of these "trees of hope."

I am glad that this legislation supports the Pacific Yew Act in making funds from the sale of the yew bark available to be reinvested in the Forest Service's yew harvesting program.

INSPECTOR FOR PORT OF PHILADELPHIA

Mr. LAUTENBERG. Mr. President, this legislation includes an important provision, at my request, to restore a part-time inspector at the Port of Philadelphia.

Under the Endangered Species Act of 1973, all fish and wildlife products, with limited exception, imported or exported through U.S. seaports and airports must be inspected by an authorized Fish and Wildlife inspector. In addition, this cargo must pass through a port designated to accept such cargo or shippers must obtain a designated port exception permit issued by the Fish and Wildlife Service. A wide range of cargo is covered under the Endangered Species Act, including products such as lizard watchbands, leather sofas, fur coats, and leather shoes.

The Port of Philadelphia is not one of the Fish and Wildlife Service's 10 designated ports. Until recently, however, the Port of Philadelphia was able to accept cargo regulated by the Endangered Species Act because a part-time inspector from Newark, NJ traveled to Philadelphia about once per week to inspect the cargo under a non-designated port exception permit. When that wildlife inspector's position became vacant the Fish and Wildlife Service, citing inadequate funding and personnel, failed to hire a replacement inspector to service the Port of Philadelphia. As a result, cargo is no longer eligible for a designated port exception permit at the Port of Philadelphia.

The loss of an inspector has an adverse impact on the amount and type of cargo that can be handled at the Port of Philadelphia. Unless a part-time inspector is reinstated in Philadelphia, the port will no longer be able to receive shipments subject to regulation under the Endangered Species Act. Perhaps of even greater concern, however, is the potential loss of business from large shippers, like retail stores, who may choose to bypass Philadelphia for all of their imports. Importers tend to utilize as few ports as possible but expect full Government services regardless of the type of cargo.

A part-time inspector would ensure the issuance of designated port exception permits to shippers and help the Port of Philadelphia continue to play a vital role in the Philadelphia-southern New Jersey region's economic well-being.

I am thankful that this legislation includes funding to support restoration of a part-time inspector at the Philadelphia Port.

NATIONAL PARK SERVICE

Mr. LAUTENBERG. Mr. President, this legislation makes important investments in the preservation of our Nation's natural and cultural heritage, through its support of the National Park Service, the U.S. Fish and Wildlife Service, and the Forest Service. It also provides essential support for the National Foundation on the Arts and Humanities as well as for the National Holocaust Memorial Council.

I would like to discuss a number of items involving parks, historic preservation, and open space that are important to my State and are addressed in this legislation.

PROTECTING THE NEW JERSEY SHORE FROM OIL SPILLS

Mr. President, I'd like to express my support for the bill's provision banning OCS leasing activities on least sale 164, which includes the Mid-Atlantic planning area, including the waters off the New Jersey coast. The Senate bill retains the House report moratoria language, and I am very pleased that the committee chose to support my request to include the moratoria in the Senate bill.

This language is consistent with Senate action earlier this year. During the Senate's consideration of S. 2166, the National Energy Strategy Act, the Senate included a provision which would ban leasing off New Jersey for the remainder of this decade. The House companion bill includes a moratorium along the entire east coast of the United States.

In 1988, then-candidate George Bush visited the New Jersey Shore. He called the pollution of our coastal waters and beaches a national tragedy, and promised to protect the Nation's shores. Yet, in his June 1990 OCS moratoria decision, the President protected only a portion of the Nation's coastline. Although he recommended moratoria for most of the west coast, much of New England and certain areas off western Florida, the President flatly ignored New Jersey and the other Mid- and South Atlantic States. That decision effectively discriminates against those States by saying that other offshore areas are somehow more sensitive and more deserving of protection.

It took the National Academy of Science 3 years, and the President's OCS Task Force another year, just to conclude that the areas placed under moratoria needed further study. And the President's decision called for an additional 6 to 10 years of study to determine the environmental impacts on these States. How can the administration already have all the answers for New Jersey and the other unprotected States? The answer is, it cannot.

Obviously, the President does not believe that these States deserve protection. But the economies of these unpro-

tected States rely heavily on their coastal resources. And spilled oil can have devastating effects on a State's commercial and recreational industries, not to mention the damage it can inflict on its marine and estuarine systems.

The waters off New Jersey are just as precious as those covered by the President's ban: Our beaches deserve equal treatment. Since the June 1990 decision, I have sent several letters to the President, and have met with the Director of the Minerals Management Service. In each instance, I have urged that New Jersey receive the same type of environmental reviews as those States which obtained moratoria. Unfortunately, the MMS is proposing to make available vast acreage off the eastern seaboard for oil and gas leasing. It's now up to the Congress to remove the prejudice and instill some justice into the OCS planning and leasing processes.

In the wake of the gulf war, the administration's national energy strategy proposed increasing our domestic production to offset our dependence on foreign oil. And OCS development was to play an important role in the administration's energy plan. Yet, even if we did develop all of the unleased portions of our OCS, it would provide us with less than 1 percent of world oil supplies. The Mineral Management Service has estimated that there is less than a month's worth of oil in lease sale 164.

These are meager benefits in the face of the potential economic and environmental risks posed to our vulnerable coastal States, and OCS development would do little to affect our reliance on the volatile world oil markets.

Increasing domestic oil production from our ocean waters is a short-term fix to our shortage of oil. The United States simply does not possess large enough reserves—on land or offshore—to satisfy this Nation's insatiable appetite for oil. The United States has the highest per capita energy consumption rate in the world. If we truly want to wean ourselves from foreign oil dependence, the answer lies in reducing our use of oil, and increasing our use of alternative fuels and renewable energy—not in increased domestic oil production from our ocean waters.

I commend the Senate Appropriations Committee for its attention to this very important issue.

LAND ACQUISITION FOR WILDLIFE REFUGES AND PARKS

Mr. President, this legislation also contains funding for refuge land acquisition that is of special significance to my State. New Jersey is the most densely populated and urbanized State in the Nation, but New Jersey also has many beautiful natural areas that are home to diverse plant and animal life. The fact that New Jersey is so urbanized, makes the preservation of our remaining undeveloped areas that much more important.

The New Jersey coast is an area that feels the pressure of development very acutely. I'm very pleased that, at my request, this legislation contains $5 million to continue acquisition of critical properties at the E.B. Forsythe National Wildlife Refuge.

The Forsythe Refuge includes critical wintering habitat for black ducks and Atlantic brant, as well as habitat for the peregrine falcon, blue heron, and the piping plover.

Last year, I worked with the chairman to provide $4 million to enable the Fish and Wildlife Service to continue acquisition at the Forsythe Refuge. Recently, the Fish and Wildlife Service obtained title to the properties with money Congress appropriated last year. I'm very pleased that acquisition has begun, but more funding is needed to continue this very important project.

This money will provide a shot in the arm for conservation efforts at the Reedy Creek unit, the Brigantine unit and the Mystic Shores area of the Forsythe Refuge.

In 1990, the Senate passed my legislation to establish in law the Wallkill National Wildlife Refuge, and later Congress appropriated funds to begin acquisition there. Recently, I had the privilege to join with others in the dedication of the Wallkill Refuge. This year, I would like to commend the committee for its inclusion of $2.5 million to continue land acquisition at the Wallkill Refuge.

The Wallkill River and its adjacent lands comprise one of the last high-quality waterfowl concentration areas in northwestern New Jersey, and is home to a diversity of wildlife, including many State-listed endangered species. These acquisitions are another important step in the conservation of ecologically significant land in New Jersey.

Mr. President, I would also like to point out that, at my request, this legislation contains $1.375 million for land acquisition at the Great Swamp National Wildlife Refuge. This refuge, located 25 miles west of New York City, is under heavy development pressure. The acquisition of land provided for in the bill will prevent encroachment from residential development that is rapidly destroying valuable habitat, degrading water quality, and threatening the ecological integrity of the swamp.

This legislation also provides $3.5 million for land acquisition at the Cape May National Wildlife Refuge. The Cape May Refuge is divided into two sections, the Delaware Bay Division and the Cedar Swamp Division, and includes land considered among the Atlantic flyway's most important staging and wintering areas during spring and fall bird migration. The refuge also contains habitats important for various plant species being considered for Federal threatened or endangered listing.

I also want to thank the chairman for his help in having $3 million included in the legislation for continuing land acquisition within the Pinelands National Reserve.

Created by Congress in 1978, the Pinelands marked the first application of the national reserve concept. The Pinelands Reserve is comprised of 1.1 million acres of land that spans seven counties, and is characterized by low, dense forests of pine and oak, cedar and hardwood swamps, bogs, marshes, and pitch pine lowlands. The reserve contains 12,000 acres of pigmy forest which is made up of dwarf pine and oak smaller than 11 feet in height. Also, the reserve houses 850 species of plants and 350 species of animals including rare species such as the pine barrens tree frog.

Three major rivers run through the reserve. Funding for land acquisition in this area will be matched by New Jersey State funds making a minimum of $6 million available to preserve this unique area.

Overall, this legislation contains more than $15 million for land acquisition in New Jersey's parks and refuges, and I'm extremely pleased that we are taking important steps to protect and preserve these environmental treasures and open spaces for ourselves and for our children.

NEW YORK-NEW JERSEY HIGHLANDS

Mr. President, this legislation contains two important projects relating to the New York-New Jersey Highlands region. This bistate region consists of 1.1 million acres and serves as the backyard to the Nation's largest metropolitan area—1 in 12 Americans live within a 1- to 2-hour drive of the highlands.

The 1990 farm bill authorized the Secretary of Agriculture, using the resources of the U.S. Forest Service, to conduct a study of the New York-New Jersey Highlands region. To accomplish the study, Congress appropriated $250,000 to examine land use patterns and to outline alternative strategies to protect the long-term integrity of lands within the region. That study is in the final stages of agency review and is scheduled to be released this week.

I understand that the final study recommendations will highlight the immediate need to protect certain threatened tracts of land which are critical to protecting the quality of the region's water supply. There are 10 major reservoirs and more than a dozen smaller impoundments located in the highlands which, according to the Forest Service, supplies drinking water for over 3.8 million people in New York and New Jersey. Water quality cannot be compromised; it is an essential link to protecting public health and the economic well-being of the region.

The analysis that the Forest Service study provides is a good first step. Now it is essential that efforts be made in this bistate region to develop an accurate understanding among the varied interest groups of the impacts of development on the region's economy and environment, and to develop actual conservation and development goals.

We know that there are resources of national significance in the highlands, but we do not know the location and type of development that will place those resources in jeopardy. The funding that I requested would be used to develop tools so local and State governments can intelligently assess the trade-offs necessary to protect the economic and natural resources of the region.

Mr. President, the Forest Service, in cooperation with the Soil Conservation Service, Rutgers University and the States of New Jersey and New York, would develop for the highlands region a natural resource information system using the latest Geographic Information System [GIS] technology. The information system would provide useful analytical tools for identifying and protecting the resources of the region. Through the GIS, current land use will be inventoried and evaluated, and areas most likely to contribute to pollution of surface and ground water could be located. The information system would facilitate comprehensive State and county planning efforts, and help evaluate environmental and economic impacts of decisions.

The Forest Service would oversee creation of a Regional Information Council for the highlands which would serve the important role of reviewing the development of the GIS, and serve as a forum to discuss and provide direction on policy issues regarding protection of the region's resources. The council would have no regulatory powers and would be charged with developing a strategy for encouraging conservation of important tracts of land as well as to promote the economic well-being of the region.

Also included in this legislation is $15 million for the Forest Legacy Program, of which up to $5 million is available to assist in the preservation, on a willing seller basis, of Sterling Forest or other critical properties in the New York-New Jersey Highlands. The Forest Legacy Program is important to highly urbanized States like New Jersey which do not share in the Federal funds allocated for national forests. I would like to commend my colleague, Senator LEAHY, for his efforts in developing and for being a champion of the Forest Legacy Program.

Sterling Forest consists of 19,500 acres of forested ridges and valleys, lakes, streams, and wetlands. The 2,000 acres of the forest which lie in New Jersey is in the process of being acquired by Passaic County. The remaining 17,500 acres of the forest are located in Orange County, NY. According to the Forest Service, Sterling Forest provides critical protection of the watershed which provides over 2 million people in New Jersey with clean drinking water. I am glad that this legislation makes available funding, through the Forest Legacy Program, to help protect some of the important resources like Sterling Forest in the highlands region.

GATEWAY NATIONAL RECREATION AREA

Mr. President, I also want to point out that this legislation contains $9.25 million to improve the beach centers and wastewater treatment system at Gateway National Recreation Area's Sandy Hook unit.

Sandy Hook continues to be an especially important recreation spot for residents of highly urbanized areas of New Jersey. Gateway quickly became one of the Nation's most popular national parks, and each year millions of people travel to New Jersey to take advantage of Sandy Hook's acres of barrier beaches, bays, lighthouse, and historical forts.

With the funding that I requested, the Park Service could begin working on the beach centers and wastewater treatment facilities which are in dire need of upgrading to keep them safe and clean for Sandy Hook's numerous visitors.

AMERICAN LABOR MUSEUM

I am very pleased that the committee included $140,000 to correct structural deficiencies at the American Labor Museum in Haledon, NJ. In 1974, the American Labor Museum was placed on the National and State Registers of Historic Places. In 1983, the Labor Museum was designated a National Historic Landmark and in 1986, the museum was the subject of a National Park Service report which evaluated the endangered status of the landmark. The funding sought under this year's Interior bill would be used to rectify some of the most pressing structural deficiencies of the site as outlined in the National Park Service's own report.

Mr. President, this project has a personal significance to me. My father worked at the Paterson silk mills and the American Labor Museum earned its designation as National Historic Landmark for its critical role during the Paterson silk strike of 1913.

The building was the home of Italian immigrant silk workers, Peitro and Maria Botto. The Bottos opened their home as a meeting place for fellow striking silk workers who were banned from Paterson by hostile authorities. The strike is considered a milestone in the Nation's history because of the effort to reform the American workplace. This strike attracted nationwide publicity which was instrumental in gaining momentum for the adoption of Federal child labor and minimum wage laws.

The National Park Service had this to say in its 1986 National Historic Landmark Condition Assessment Report:

> A watershed in American labor history, the strike marked the emergence of non-English speaking immigrants as the major labor force in the Northeast. The nationwide publicity this strike engendered was instrumental in the development of the American social conscience and the adoption of Federal child labor and minimum wage laws. The weekly meetings held * * * at the Botto House were important in maintaining worker solidarity.

Today, the Botto's house is owned and operated by the American Labor Museum, a nonprofit organization devoted to advancing public understanding of work, workers, and the labor movement in the United States. The National AFL-CIO has encouraged unions and others to support the Labor's Museum activities.

If the museum is to be successful in its important mission, structural renovations are sorely needed. I hope my colleagues will join me in endorsing this legislation which provides a small, but important, investment of Federal dollars to improve this threatened National Historic Landmark which serves as a tribute to the national labor movement.

Mr. President, I would again like to commend the distinguished chairman for his outstanding work on this bill and for his cooperation, assistance, and attention to the needs of the State of New Jersey. I would also like to commend the chairman's chief clerk, Sue Masica, for her very helpful and competent assistance. I also would like to thank Rusty Mathews for his assistance.

I urge my colleagues to support this legislation.

WHITE CLAY CREEK

Mr. BIDEN. Mr. President, northern Delaware and southeastern Pennsylvania are in the heart of the megalopolis, as some call it, stretching from New York City to Washington DC. Most would not consider this area the likely host for a wild, scenic and recreational river. And if not for the efforts of thousands of citizens in Delaware and Pennsylvania over the years, that impression would be correct.

But in the middle of this urban sprawl is a natural treasure, the White Clay Creek, that starts in the southern corner of Pennsylvania and winds its way into northern Delaware, and then across the State to the Christina River and the Delaware Bay. Last year, Congress passed a bill to designate the White Clay Creek and its tributaries for study under the Wild, Scenic and Recreational Rivers System. It is a study that is just getting started, but one that many of us hope will form the basis for lasting protection of this regional treasure.

I have long supported the efforts of local citizens to protect the White Clay

Creek from overdevelopment. Earlier this year, I was joined by my Senate colleagues from Delaware and Pennsylvania in writing to the chairman of the Interior Appropriations Subcommittee, Senator BYRD, to request funding for this important study. I am pleased that the chairman and the subcommittee included funding for the study in the committee report.

As I stated, the National Park Service has started the study process. If this study is to be completed in a reasonable timeframe, and be of the quality that the citizens of the region have the right to expect, committee and congressional support is important. The committee report makes clear that this study should remain a priority of the National Park Service.

This study will help bring together Federal, State and local actions in a coordinated manner for the benefit of White Clay Creek and future generations. I look forward to working with the National Park Service on this study through its completion.

Mr. KERRY. Mr. President, I want to indicate my support for the Interior appropriations bill and I want to congratulate Chairman BYRD and ranking members HATFIELD and NICKLES and other members of the subcommittee and full committee for their efforts in bringing this bill before us today.

I know it was an especially difficult task this year given the restraints of an extremely tight budget and the ever-growing demands for additional protections for our natural resources and national heritage that are this subcommittee's charge.

Among the pressures with which the subcommittee must contend each year is the understandable desire by many Members to accord the status of national parks and forests to significant natural or historic areas in their States. There are many very deserving parks and forests, wildlife refuges and national historic sites, including many in Massachusetts, that merit inclusion in the National Park System, but limited financial resources tied the subcommittee's hands in 1992.

I hope that we can take the necessary steps to turn this economy around and get our Federal budget under control so that in future years the subcommittee, full committee, and the Senate will not labor under such handicaps in our efforts to meet fully the important obligation to preserve our national resources and heritage for future generations.

While I have some reservations about particular measures and some disappointments about some omissions, given the current situation I am pleased that a number of important Massachusetts components of the park system were selected for expansion or reconstruction, and I express my appreciation to Chairman BYRD, the ranking members, their colleagues and the staff.

In addition to the commission funding, the Lowell Historic Preservation Commission in Massachusetts received funding to continue land acquisition and complete construction of the Boott Mill Museum. A unique component of the National Park System because of its urban setting, the Lowell Urban Park serves as a commemoration of the technological resources and the human stories behind the Industrial Revolution.

Lowell is recognized as one of the Nation's most successful partnership parks. The cooperative relationship developed in Lowell between the NPS, the Commonwealth of Massachusetts, the city of Lowell and the private sector continues to yield a tremendously cost-effective and high quality historic preservation and public education effort. Lowell serves as a commemoration of the technological resources and the human stories behind the Industrial Revolution. The Lowell Historic Preservation Commission has worked well with the NPS to facilitate the historic preservation and cultural programs of Lowell since its establishment 14 years ago. I am pleased that the committee included funds for the Lowell Commission and to continue rehabilitation of the park's main historic building, the Boott Cotton Mills.

Another important historic site is the U.S.S. *Constitution*, the oldest commissioned warship afloat in the world. Both the warship and the adjacent U.S.S. *Constitution* Museum received $2 million in funding to complete the remaining Federal component of this private-public partnership. The museum has committed to raising half the funds needed to expand its facilities in an effort to increase its innovative educational programs and important conservation work to preserve priceless objects and papers that tell the story of the ship and the events and people related to her history.

I am pleased that two other important NPS facilities, Salem Maritime National Historic Site and the Adams National Historic Site, received additional funding for development of their sites. The Adams site, located in Quincy, interprets the lives of two Presidents, John Adams and John Quincy Adams, and four generations of the Adams family. The NPS' special resource study of Quincy highlighted the need for repairs to the United First Parish Church where both Presidents and their wives are buried, and rehabilitation of the historic home, carriage house and barn. Because visitation has increased by 147 percent in the past year, a shuttle system has been proposed to enable visitors to experience all portions of the historic site parts of which are over a mile from each other.

The Salem Maritime National Historic Site received additional assistance to continue its efforts to rebuild the wharves and to establish a new visitor center in the renovated old armory. This funding is critical to continue the 4-year effort to complete this nationally significant site which depicts the lives of those who were directly involved in the trading routes to the Far East.

In addition to NPS projects, I am pleased that Massachusetts received additional funding for the U.S. Geological Survey [USGS] National Coastal Geology Program to continue a major regional study of polluted sediments in Boston Harbor and the Massachusetts Bay. The Massachusetts Water Resources Authority [MWRA] provides additional funding from its monitoring budget and with this combined funding the program maps sediment contamination throughout the bay area and develops long-term sampling and numerical models of water circulation patterns to more accurately predict sediment buildup.

Unfortunately, for reasons I have outlined, many of these worthy projects—some of which I've previously mentioned, including Salem and Lowell, and others such as the Cape Cod National Seashore—received significantly less funding in this bill than in the House's bill. I look forward to working with Chairman BYRD and ranking members HATFIELD and NICKLES in the hope it will be possible to find a way to support the House funding levels in conference.

In closing, Mr. President, I once again commend my colleagues for their work on this bill, and the committee staff, especially Sue Masica who has been very generous with her time and attention. The bill is a particularly impressive accomplishment for them given the fiscal constraints under which they labored. I look forward to working with all of them as the process continues toward a conference committee.

INDIAN SATELLITE TREATMENT FACILITIES

Mr. REID. Mr. President, I want to take this opportunity to clarify the intent of language contained in Senate Report 102-345, concerning the location of the Phoenix area satellite facility to be established pursuant to the Indian Alcohol and Substance Abuse Prevention and Treatment Act. Schurz, NV, was the original site proposed for the Phoenix area satellite facility. For a variety of reasons, however, discussions between the Indian Health Service and the Walker River Paiute tribal government failed concerning the location of the satellite facility at Schurz, NV, which falls within the bounds of the Walker River Reservation.

Since that time, tribal governments in the Phoenix area have participated in ongoing discussions concerning an alternate site for the satellite facility. Recently, tribal governments in the Phoenix area have reached agreement on the alternate site. Therefore, the re-

port language adopted by the committee is intended to provide the Indian Health Service with the legislative authority required to change the location of the proposed regional youth treatment center satellite from Schurz, NV, to an alternate site to which Phoenix area tribal governments have agreed.

Mr. BYRD. Is it the Senator's understanding that the tribal governments in the Phoenix area have agreed to an alternative site in Nevada?

Mr. REID. Yes, indeed it is my understanding that both the Intertribal Council of Nevada and the Intertribal Council of Arizona have endorsed locating the Phoenix area satellite facility on the reservation of the Fallon Paiute-Shoshone Tribes in Fallon, NV. In addition, tribal governments within the Phoenix area which are located in Utah have endorsed changing the designated location of the satellite from Schurz to Fallon, NV.

Mr. President, funding for planning, design and renovation has been appropriated previously and allocated for the establishment of a youth regional treatment center satellite at Schurz, NV. I would like to inquire as to whether it is the intent of the committee that, in proceeding with the establishment of a satellite facility at the alternate site agreed upon by tribal governments in the Phoenix area—the Indian Health Service will reallocate unexpended funds toward the establishments of the satellite facility at the alternate site in Fallon, NV.

Mr. BYRD. I would say to my colleague from Nevada that the committee is in agreement that this is how the Indian Health Service should proceed.

Mr. REID. I wish to clarify another point, namely, that it is understood that the Indian Health Service will have to develop program specifications, including space requirements, appropriate for the establishment of the satellite facility at Fallon, rather than Schurz, NV. Unlike Schurz, there are no Indian Health Service buildings in Fallon, NV suitable for renovation. Location of the youth regional treatment center satellite at the agreed upon alternate site will therefore require construction of a building according to specifications developed by the Indian Health Service.

Mr. BYRD. It is the committee's expectation that construction of a youth regional treatment facility at Fallon will not exceed specifications appropriate for a satellite facility.

Mr. REID. I understand the term, satellite, does not refer to the size of a facility or to the extent of the services offered at any given facility. Rather, a satellite facility refers to the timeframe for inpatient treatment. In the case at hand, the proposed youth regional treatment satellite in Fallon, NV, would offer inpatient services for a period not to exceed 30 days, while the primary facility located at Gila River, AZ, would offer inpatient services for a period up to 90 days.

Mr. BYRD. I hope that this discussion clarifies the committee's intent with regard to the location of Phoenix area satellite facility in Nevada for regional youth treatment.

Mr. REID. Mr. President, I thank Chairman BYRD for discussing this issue which so greatly affects the Indian tribal governments in my home State of Nevada. Let me assure him that I am quite pleased with the increases made on behalf of the Indian Health Service and congratulate him for his leadership with regard to this program.

FUEL CELL VEHICLES

Mr. HARKIN. Mr. President, I would like to engage the chairman of the Appropriations Committee in a colloquy.

As the chairman knows, the Interior appropriations bill before us today includes $15 million for a new hybrid vehicle project within the Department of Energy's Electric and Hybrid Propulsion Development Program. My understanding is that the Department of Energy anticipates awarding three competitively bid contracts to develop hybrid propulsion systems by the 1997 time period. These propulsion systems would be battery powered, but with an auxiliary source of energy to extend the range of any vehicles in which they are integrated. Does the chairman understand that to be the case?

Mr. BYRD. Mr. President, the Senator from Iowa is correct.

Mr. HARKIN. I am a strong supporter of hydrogen powered fuel cell vehicles. These would actually be hybrid vehicles, in the sense that any fuel cell vehicle would have some batteries for getting started and for acceleration. The fuel cell provides the range extensions, just as some type of fossil fuel powered engine provides extra range in a hybrid vehicle.

But the fuel cell vehicle powered by hydrogen, unlike a fossil fuel powered hybrid, would produce no emissions. A fuel cell vehicle would satisfy the California 1998 Zero Emission Vehicle [ZEV] requirement.

This Nation needs an advanced fuel cell program, to develop an air-breathing, proton exchange membrane [PEM] fuel cell vehicle powered directly by hydrogen. PEM fuel cells could become the primary source of energy for hybrid electric vehicles in the 21st century, and I want PEM fuel cells to be manufactured in America.

Is it the chairman's understanding that the PEM fuel cell powered vehicles powered by direct hydrogen would qualify for the hybrid vehicle contracts funded in this Interior appropriations bill?"

Mr. BYRD. I appreciate the Senator's concern about both the need to support fuel cell technology, and the importance of such technology. The Department of Energy informs me that there are still many technical and economic hurdles which remain before industry could commercialize fuel cell hybrid vehicles. Programs which propose direct hydrogen fuel cell propulsion systems will be eligible to compete for the hybrid vehicle contracts on an equal basis with other hybrid systems.

SUBMARINE TAILINGS

Mr. STEVENS. Mr. President, I recently learned of a project related to an interesting environmentally preferred option for mine tailings disposal. The Bureau of Mines at the Department of Interior has expressed an interest in studying submarine tailings disposal which has been successfully used by the Canadians. Are the Chairman and Senator NICKLES aware of the work planned by the Bureau and can any funds be made available for this activity?

Mr. NICKLES. I have heard of the tailing disposal method that Senator STEVENS mentioned. Of course we are always looking for the most environmentally sound method to conduct mining activity. I would encourage the Bureau of Mines to expedite work on what appears to be a promising, environmentally sound option to allow even safer mining in the future.

Mr. BYRD. I too am glad to hear of this forward-thinking work by the Department and Bureau. If my colleagues concur, I think the Bureau should move ahead with this project. Within available funds, the Bureau should enter into a cooperative agreement with private industry to develop a field demonstration project and study and provide material for laboratory testing to determine the environmental safety and economic feasibility of submarine tailings disposal.

Mr. NICKLES. I think the Bureau should do that in fiscal year 1993.

Mr. BYRD. I concur.

Senator STEVENS. I thank the chairman and ranking member.

WEATHERIZATION ASSISTANCE

Mr. HATFIELD. Mr. President, I would like to address the distinguished chairman of the Appropriations Committee and the ranking member on the Interior Appropriations Subcommittee to raise a concern which we discussed in the Committee meeting. The Department of Energy's Weatherization Assistance Program is funded at $177.6 million in this bill which is a decrease of 8 percent or $16.8 million below its fiscal year 1992 level. I am aware of the difficult constraints the subcommittee faced in trying to accommodate so many demands on this bill. This Committee recommendation is a formidable achievement. However, I remain concerned the Weatherization Assistance Program, which reaches out to low-income Americans, was reduced while funding in other energy conservation activities, including program administration and management, were increased above the fiscal year 1992 levels.

In the Technical and Financial Assistance Office which administers seven activities: Weatherization assistance accounted for 71 percent of the funds in fiscal year 1992; 6 percent of the funds were in the State Energy Conservation program; and 11 percent of the funds were in the Institutional Conservation program. Each of these programs are reduced by 8 percent from the fiscal year 1992 levels. Yet, while this bill reduces the Office's largest responsibilities, it adds $3 million to the management line-item.

I would like to propose the Senate maintain the current fiscal year 1992 funding level of $24,000,000 for the management line item within technical and financial assistance and transfer the difference of $3,000,000 into the weatherization line item. I would ask the distinguished chairman and ranking member of the Interior Subcommittee if they would approve this request.

Mr. BYRD. I appreciate the Senator from Oregon's recognition of the difficult decisions the Subcommittee has made to select among the many priorities that claim these limited funds. It should be noted that of the $3 million increase in management for Technical and Financial Assistance, approximately $700,000 is for activities which were previously funded through the Energy and Water development appropriation, but which are now funded through this bill. An additional approximately $1.3 million is to assist state energy offices in deploying advanced energy technologies, providing training in energy efficiency design, and increasing the efficiency of the support offices. I can appreciate the gentleman's concern regarding the Weatherization Program and I have no objections.

Mr. NICKLES. I concur and will seek that result in conference.

Mr. HATFIELD. I thank the chairman and ranking member.

PRIME HOOK NATIONAL WILDLIFE REFUGE, DE

Mr. ROTH. Mr. President, I want to commend my friend, the distinguished Senator from West Virginia and President pro tempore of the Senate and chairman of the Committee on Appropriations, Senator BYRD, and my friend and colleague from Oklahoma the ranking minority member of the Interior Appropriations Committee, Senator NICKLES for their cooperation in getting the Interior Appropriations bill for fiscal year 1993 to the floor today. They have done a splendid job. I also want to thank them for their efforts, albeit unsuccessful, concerning a matter of great importance to my State. Last March I brought to their attention the need for a new office/visitor complex, a new vehicle and general maintenance shop and an equipment storage facility building at the 9000 acre Prime Hook National Wildlife Refuge. Due to the severe funding constraints every appropriations bill has faced this fiscal year, unfortunately no funds were available for any proposed new visitor center projects. Mr. President, I wanted to share with my colleagues some of the unique qualities of this refuge, and discuss the future needs of the facility. The refuge is one of two Fish and Wildlife Service Refuges' in my State, the other is the Bombay Hook National Wildlife Refuge. Since the Prime Hook Refuge was established in 1963 it has operated its administrative and public contact functions from a tiny square foot milk house on a former dairy farm. This completely inadequate facility has been scheduled for replacement since the refuge was first acquired by the Federal Government, but the purchase of new refuge lands elsewhere and the curtailment of construction funding has precluded any action up to this fiscal year. The refuge has become internationally recognized for its unique geographical and biological significance. It is currently the site of some of the most active wildlife management habitat work in the Northeast region of the United States, that includes extensive marsh reclamation and management work which last year resulted in the harboring of more ducks in the winter than any other location in Delaware. Many of the 50,000 people that visited this facility last year took advantage of the unique qualities this site offers. Mr. President, all these sound environmental management practices would not be possible however without the dedication of the various landowners who have made this possible. Their mission of conserving the unique wildlife and wetland habitats of the refuge are well recognized.

Mr. President, I requested funds for a replacement office/visitor facility this year because the current cramped space is inefficient for administrative functions and for public information/education on the natural values of the refuge. In addition, the Fish and Wildlife Service capability statement prepared for me for this purpose recognized this matter as well. I hope to secure funding in the future for a replacement office/visitor complex, and hope that future budgets will allow for accomplishing this goal.

Mr. BYRD. Mr. President, I commend the diligence of my good friend, the senior Senator from Delaware, Mr. ROTH. I would like to let my colleague know that the committee will consider the request of the Senator from Delaware in next year's Interior appropriations bill. In addition, the committee urges the Interior Department to consider the refuge's request for funding of a replacement office/visitor complex and new maintenance shop and equipment storage building in its fiscal year 1994 budget request.

Mr. NICKLES. Mr. President, I would like to concur with the statement of the chairman of the Appropriations Committee on behalf of my good friend from Delaware, Senator ROTH. I also understand that the U.S. Fish and Wildlife Service has indicated that the current space at the Prime Hook National Wildlife Refuge is inadequate and that its replacement is a top priority item. I look forward to working with the Senator and also urge the Interior Department to give this request every consideration possible.

Mr. ROTH. I would like to thank my friends, and look forward to working with them on this issue of such importance to my State and all Delawareans.

DOMESTIC ENERGY

Mr. JEFFORDS. I would like to thank my colleague for yielding to me. Though we differ on methods, I think we both agree that domestic energy production is very important to the security of this country. I also believe we agree on the importance of natural gas to our energy security.

Mr. NICKLES. My colleague is correct on both counts. Representing an energy producing state, I am intimately aware of the problems the domestic energy industry faces.

Mr. JEFFORDS. In researching alternative energy and fuel sources, I learned about several new technologies under development, one of which may be of interest to my colleague. I am sure he is very knowledgeable about cogeneration. Recently, I learned that some engineers are experimenting with what they call cryocogen. These researchers tell me that using natural gas as a feedstock, they can produce electricity, heat energy, and the inert gases carbon dioxide and nitrogen. The recovery of the carbon dioxide and nitrogen not only has positive environmental implications, but also improves the economics of the process for small scale applications. Reuse of the carbon dioxide can reduce total carbon dioxide emissions by 75 percent. I believe this technology deserves a closer evaluation by the Department of Energy. I recognize that DOE's budget is tight, but would my colleague support DOE looking into this process.

Mr. NICKLES. That sounds like an interesting process and I would certainly encourage DOE to work with these researchers to evaluate this process. I appreciate my colleague's willingness to address this issue in this manner.

Mr. JEFFORDS. I thank my colleague and yield the floor.

CROATAN NATIONAL FOREST

Mr. SANFORD. Would the distinguished chairman of the Appropriations Committee entertain a few brief remarks on a matter which is of significant concern to me and many other North Carolinians?

Mr. BYRD. I would be happy to hear from my friend from North Carolina.

Mr. SANFORD. Let me first commend the Senator for his extraordinary efforts as chairman of the Interior Appropriations Subcommittee in this cli-

mate of severe budgetary constraints. I do understand that not all worthy projects were about to be funded.

One such project which I, and a number of my constituents, have mentioned to the chairman, involves the acquisition of 4,734 acres by the Forest Service to be added to the Croatan National Forest in Craven County in eastern North Carolina. This property harbors wetlands, forests, and endangered species, and it is bordered by wilderness and a wildlife-rich lake. It is because of these special values that the Forest Service had made acquisition of this property a high priority. However, these attributes also make this property, known as the B.H. Oates tract, extremely attractive for development.

In fact, Mr. President, I have recently learned that the bank which has provided financing for the landowner will assume control of the Oates tract and pursue a development option if the bank does not have some assurance of the Government's intent to take an active posture regarding land acquisition.

Mr. BYRD. As the Senator from North Carolina is no doubt aware, the committee has been unable to commit to specific funding for the project for fiscal year 1993. Recognizing the importance of this matter to my friend, I will, however, pledge to give specific review of this land acquisition project when the Interior Subcommittee sets its priorities next year.

Mr. SANFORD. I am pleased that my friend has assured me that he will give the Oates tract his attention in the coming months and I hope that he will remain aware of the urgency involved with this project. I also intend to pursue other options for at least partially funding the project this year in hopes that the bank will recognize that we are indeed moving forward.

Mr. BYRD. As the Senator from North Carolina and his constituents have described the tract, the Oates property does seem to be a very worthy addition to the Croatan National Forest. I wish the Senator from North Carolina well in his efforts to find available funding soon to keep this project going, and I hope to be of help in the future.

Mr. SANFORD. It is gratifying to hear such words of support from the senior Senator from West Virginia. He has been a true friend to the citizens of North Carolina over the years. I thank him for his indulgence.

Mr. BYRD. I thank my distinguished colleague for his kind remarks and for sharing his concerns with me on the need to expand the Croatan National Forest.

OKLAHOMA INDIAN CULTURAL CENTER

Mr. NICKLES. Mr. President, I would like to bring an item to the attention of the chairman regarding the Oklahoma Indian Cultural Center. As the Senator may be aware, Oklahoma's Indian tribes, numbering more than 40, are currently working to develop an Indian Cultural Center to be located in Oklahoma City. The proposed center would highlight each tribe's history and culture, including the stories of their removal to Indian territory, which is now the State of Oklahoma. These stories have not been adequately told, and the proposed cultural center would allow the tribes a unique opportunity to educate the American public about the rich history and culture of the American Indian.

As the chairman knows, tribes now living in Oklahoma originally roamed and lived in every State, and their cultures represent and reflect those native lands from which they were removed. In fact, two tribes now located in Oklahoma were originally located in an area that included West Virginia. These tribes, the Eastern Shawnee and the Delaware, and their history would be highlighted in the proposed cultural center.

It is of great importance to all that the unique culture and heritage of the different tribes be preserved. Oklahoma Indian tribes represent all 48 contiguous States, making this a facility of national interest and significance. With tourism as one of the major industries in Oklahoma, this project is of great importance not only socially but economically.

Because of program restraints we were unable to provide an appropriation to fund a feasibility and site recommendation study as authorized under Public Law 102-196. This initial Federal funding is considered extremely important in establishing the credibility and feasibility of the project. Once the ball is rolling, the State and city are committed to providing funds as well as raise the private contributions that will be necessary.

Mr. BYRD. As my friend from Oklahoma knows, the funding available in this bill simply did not allow us to fund any feasibility studies for new projects. But I do understand the uniqueness of the Oklahoma approach and the wide range of support that it has from the large number of Indian tribes in Oklahoma. With that in mind, I give assurances to my friend from Oklahoma that I will work with him to continue the momentum on this project.

Mr. NICKLES. I thank my friend from West Virginia for his support, and look forward to continuing to work with him on this most important project.

BIG SOUTH FORK AND OBED RIVER FUNDING

Mr. SASSER. Mr. President, the committee report accompanying H.R. 5503 contains a line item appropriation in the National Park Service construction account of $1 million for the Big South Fork National Recreation area in Tennessee. This money is to be used to construct needed river access roads, trails, and overlooks. The Obed Wild and Scenic River area is a separate unit of the National Park Service, but is managed and administered by the superintendent of the Big South Fork. Would the Senator from West Virginia agree that the Park Service should utilize up to $200,000 of the appropriation for the Big South Fork to meet the long-neglected development needs of the Obed River?

Mr. BYRD. Mr. President, I would say to the distinguished Senator from Tennessee that I am aware of the development needs at the Obed River. I agree that the Park Service should utilize up to $200,000 of the appropriation for the Big South Fork to meet those needs, and I will take whatever steps are necessary in conference negotiations on the bill to make that intention clear.

STONES RIVER NATIONAL BATTLEFIELD

Mr. SASSER. I would like to engage the distinguished Senator from West Virginia in a colloquy regarding an item of great importance to Tennessee and the Nation. As you will recall, the committee has previously provided funding for land acquisition, planning, and construction at the Stones River Battlefield in Murfreesboro, TN. Late last year the legislation authorizing expansion of the battlefield by 234 acres became Public Law 102-225.

The House of Representatives has provided in its version of the Interior and related agencies appropriations bill $3 million for land acquisition to expand and preserve the battlefield. This land acquisition funding is essential to protect historically significant tracts that are imminently threatened with commercial development. The acquisition of the additional acres will not only increase the historical assets of the battlefield, but it will also improve the ease of access and aesthetic value of the entire park. This amount of funding was included on the funding priority list for land and water conservation fund moneys established by a consortium of 27 natural resource preservation and environmental protection groups.

I am pleased that the Senate Appropriations Committee has included in this bill $395,000 in construction funding for the battlefield to complete work on Fortress Rosecrans and Brannan Redoubt. Unfortunately, the committee was unable because of budget constraints to approve the money needed for land acquisition funding.

Because of the imminent threat to these lands, it is crucial that they be acquired as soon as possible. Therefore, I would like to request that the Senator from West Virginia carefully consider adopting the House position with regard to the Stones River National Battlefield land acquisition funding during conference negotiations on this bill.

Mr. BYRD. I understand the concern of the Senator from Tennessee regarding land acquisition funding for the

Stones River National Battlefield. As he says, the committee faced very difficult constraints this year and was unable to fund many worthy projects. I assure the Senator, however, that I will give every consideration to his request when we conduct conference negotiations with the House.

HANNAHVILLE INDIAN SCHOOL

Mr. LEVIN. Mr. President, I would like a moment to address the floor manager of the bill.

Mr. President, I was very pleased to see that the chairman included language in the report regarding reprogramming of funds from several construction projects that experienced delays to meet current school construction needs for fiscal year 1992. As the chairman knows, the Hannahville Indian School in our State of Michigan is currently under construction and both the tribe and the Bureau of Indian Affairs [BIA] now agree that the project is approximately $500,000 short of the funds required to complete the project and meet North Central Accreditation standards. It is my understanding that the committee would permit the BIA to expand up to $500,000 of available funds for facilities improvement and repair to complete the Hannahville Project.

Mr. BYRD. Yes; the Senator is correct.

Mr. LEVIN. Mr. President, my colleague from Michigan, Senator RIEGLE, joins me in thanking the chairman for his support and cooperation in this matter.

STEWARDSHIP END RESULT CONTRACTS

Mr. CRAIG. Mr. President, Senator BURNS and I are very pleased that our amendment to H.R. 5503 regarding stewardship contracts was enacted. It adds the Idaho Panhandle National Forest in Idaho and the Kootenai National Forest in Montana to the list of forests authorized to participate in the pilot program.

The stewardship approach permits the combination of a sequence of needed silvicultural practices under one contract, rather than contracting each individually. These contracts usually extend for a number of years, during which a variety of silvicultural activities may be needed. For example, a contractor may cut commercial timber, replant the cutting units, and tend the growth of the young trees over a 3- to 5-year period.

A number of benefits become obvious. Paperwork and administrative costs to the Forest Service are reduced because they will prepare, advertise, and administer fewer contracts. Unit costs bid for stewardship should be less due to economies of scale and more focused accountability. Stewardship should offer contractors greater opportunity to provide year-round employment since the various silvicultural practices are best done in different seasons.

Utilization of stewardship contracts does not change the amount of Forest Service appropriations. It offers promise that they may be spent more efficiently. For these reasons, Senator BURNS and I are supportive of the pilot program and pleased to have it extended to our States. We thank the chairman for his help in moving this amendment.

Mr. NICKLES. I thank the Senator and Senator BURNS for offering the amendment. I agree with them that stewardship contracts make sense and the concept should be developed further. Let me emphasize that this is a pilot program, and currently a very small one. I will be interested in the results achieved on all the pilot forests.

Mr. BYRD. I concur. Addition of two national forests in the northern Rockies is a modest and desirable modification in this pilot program.

FOREST SERVICE'S NEGRITO WATERSHED PROJECT

Mr. BINGAMAN. Mr. President, I want to discuss an important program that the Forest Service has for new initiatives, the New Perspectives Program. Through a demonstration project for ecosystem management on a landscape scale within the Gila National Forest, the Forest Service could address problems surrounding use of forest resources. An interagency team would work to ensure the sustained health of the forest community, and commodity production could be based on stewardship and sustainable local supply. Mr. President, although earmarked funding was not included in the fiscal year 1993 Forest Service appropriation for this program, it would be my hope that region 3 of the Forest Service would do its best to support a demonstration project at the Negrito Watershed. I feel very strongly that such a New Perspectives project—with its ecosystem approach—marks the future of forest management. This project would provide for citizen participation and is designed to promote a healthy landscape, biodiversity, sustainable resources production, and multiple use.

Mr. BYRD. I would hope that the Forest Service would support this project at the Negrito Watershed from within existing resources. As the Senator is aware, the committee report accompanying this bill (S. Rep. 102-345), includes direction to the Forest Service to give consideration to the Gila National Forest as a site for New Perspectives demonstration projects.

KEWEENAW NATIONAL HISTORICAL PARK

Mr. LEVIN. Mr. President, I would like to engage the distinguished chairman of the Appropriations Committee on a matter of great importance to me and to my State.

The committee's bill does not now include specific reference to the provision of $875,000 requested by the administration in funds for planning and implementing the proposed Keweenaw National Historical Park, subject to authorization. As the Chairman knows, I have been working assiduously to gain passage of my bill, S. 1664, to provide that authorization. These funds will be crucial to the expeditious development of the proposed park.

My understanding is that $875,000 will be available to the National Park Service under the terms of this bill for planning and implementation of the proposed Keweenaw National Historical Park in fiscal year 1993.

Mr. President, I ask that the Senator from West Virginia, in his capacity as chairman of the Appropriations Committee, confirm that my understanding is correct.

Mr. BYRD. The Senator from Michigan is correct. These funds will be available provided authorization is enacted. Specific reference is not provided since the committee report is written in terms of changes to the budget request.

Mr. LEVIN. I want to thank the chairman for including these funds in this bill. I would also like to ask the chairman to do his best to preserve these funds in conference.

Mr. BYRD. I will do my best to keep this provision in conference.

RED LAKE RESERVATION PROJECT

Mr. WELLSTONE. Mr. President, I would like to engage the distinguished floor manager in a brief colloquy regarding a project to upgrade the water system to areas within the Red Lake Indian Reservation. I am grateful to the chairman for his help in providing critical funding for several natural resource and Indian programs and projects in Minnesota in this bill.

This project would upgrade the water system which currently serves the Red Lake Indian Reservation in Minnesota. The tribe has already begun work on a related project under a grant from the Economic Development Administration [EDA] which will connect the water systems of Redby and Red Lake with a source of clean water. Unfortunately, the EDA grant will not fund system hookups from the transmission line to the existing households. The funding I requested again this year would allow 370 homes along the new water transmission line to be connected to the water system, finishing this project.

Improvements in the water system are critical to improving the public health on the reservation. People living in the 370 homes which would be connected if these funds are provided currently use well water which exceeds maximum EPA-approved secondary levels of iron, manganese and hydrogen sulfide. Among the health problems related to water quality is a very high local dysentery rate, and these residents are considered to beat a much greater risk of dysentery than is the U.S. population at large.

As the chairman will recall, last year he agreed to earmark funds for this

vital project, but the earmark was dropped in conference. Mr. President, the need is just as urgent this year as it was last year.

Mr. President, as is reflected in the letter I received today from the Chairman of the Red Lake Band of Chippewa Indians, the water project on the Red Lake Reservation continues to be the tribe's number one sanitation priority, and the Indian Health Service has been notified of the fact. I ask consent to insert that letter in the RECORD.

The Federal Government can save considerable time and expense by coordinating the construction of the EDA transmission line with the service connections to the homes adjacent to the EDA project. It is my understanding the committee has not earmarked funds for this or any other project this year, given budgetary constraints. I therefore ask the chairman if he would be willing to direct the Indian Health Service to give this project the highest rating under the category "other considerations," due to the special circumstance precipitated by the EDA project.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

RED LAKE BAND
OF CHIPPEWA INDIANS,
Red Lake, MN, August 5, 1992.

Hon. Senator PAUL WELLSTONE,
U.S. Senate, Washington, DC.

DEAR SENATOR: Thank you for alerting me to the confusion which Indian Health Service is apparently still having over the Red Lake Band's Sanitation Priority Listing.

Over the past several weeks I have reiterated to representatives of the Indian Health Services that our Number 1 priority has been and will continue to be the service connections for homes located adjacent to the EDA water transmission line. This is so important to us that we have been reluctant to prioritize anything else for fear of detracting from that Number 1 ranking.

We sincerely appreciate anything you can do to keep this in the forefront of your colleagues' consideration during these final deliberations.

Thank you very much for all your assistance.

Regards,

GERALD F. BRUN,
Tribal Chairman.

Mr. BYRD. I thank my colleague from Minnesota, Senator WELLSTONE for his acknowledgment of the severe funding constraints under which the committee was working this year.

The circumstances concerning the Red Lake water project, particularly in regard to the improvement of health conditions, require special consideration. For that reason, I will expect the Indian Health Service to give the Red Lake project every possible consideration to providing the highest possible rating under the category other considerations, particularly given the efficiencies to be gained from this project. I would also note that every effort will be made in conference to provide the highest level of funding possible for Indian Health water and sewer projects, to ensure that this project moves forward.

Mr. WELLSTONE. Mr. President, I thank the chairman for his assistance. I am grateful for his continued support of this vital project.

STATE AND LOCAL ENERGY ASSISTANCE PROGRAMS

Mr. WELLSTONE. Mr. President, I rise to enter into a colloquy with my distinguished colleague from West Virginia, the chairman of the Senate Appropriations Committee, Senator BYRD. As my colleague knows, I am deeply concerned by the Committee's proposed reductions in funding for State and local assistance programs of the Department of Energy for fiscal year 1993. In particular, the committee proposes a cuts totalling $20.2 million for the low-income weatherization program, the schools and hospitals conservation program, the State energy conservation program, and the Energy Extension Service. I believe that these are vital programs to deliver energy efficiency services, and they are complementary to the comprehensive national energy strategy which the Senate just passed.

I wish to ask my distinguished colleague whether in light of the Senate's action to move forward with a national energy program stressing energy efficiency, he could work towards restoring the funding for these four programs in conference with the House.

Mr. BYRD. I appreciate my colleague's strong support for these programs, but as he knows I cannot make any commitment about the outcome of a House-Senate conference on this bill. However, I will try my best to restore these programs to their fiscal year 1992 funding level.

Mr. WELLSTONE. As my colleague knows, I was prepared to offer an amendment to transfer funds from administrative increases in several Department of Energy offices to these four programs. I would like to ask whether the Senator from West Virginia would be supportive of such a transfer.

Mr. BYRD. I have seen the Senator's amendment which would transfer $4.6 million from administrative increases in various DOE offices to these program accounts. While again I cannot commit to a specific outcome from the conference, I will assure my colleague that I am sympathetic with this approach and will favorably consider moving in this direction.

Mr. WELLSTONE. I wish to thank my distinguished colleague from West Virginia for his assurances. I know that with his support the conference will make positive efforts towards restoring funding for DOE's State and local assistance programs.

MINERALS MANAGEMENT SERVICE LEASING AND ROYALTY MANAGEMENT

Mr. JOHNSTON. Mr. President, I would direct the chairman's attention to report language on page 41 of Senate Report 102-345 that reduces funding in the International Activities and Marine Minerals Program of the Minerals Management Service [MMS].

First, let me say that I strongly share the committee's concern that funding of MMS activities overseas is inappropriate when MMS budget requests for important domestic programs of higher priority are inadequate.

However, I note that important domestic activities directed at coastal restoration and wetlands enhancement have historically been included in this account in coastal States including Louisiana such as the ship shoal project, which involves wetlands protection and barrier island restoration in an area of my State which is suffering from the effects of severe coastal erosion.

Is it the committee's intent that domestic activities and projects such as those described above as well as cooperative agreements with coastal States be continued at their current level within the funding provided?

Mr. BYRD. Yes; that is my understanding.

Mr. JOHNSTON. I thank the distinguished chairman for this important clarification and appreciate his time on this issue.

ACQUISITION OF BLOCK ISLAND PROPERTY

Mr. CHAFEE. Mr. President, I am here today to express my appreciation to Senator BYRD for offering an amendment on my behalf to provide $1.5 million for the acquisition of an important addition for the Block Island National Wildlife Refuge in Rhode Island. This is a unique area which would soon be lost to development, as I will describe further. First, I would like to seek a point of clarification with regard to the amendment from Senator BYRD.

My understanding is that the amendment that you referred to in your statement as the Chafee amendment to add $1,500,000 for Fish and Wildlife Service land acquisition at Block Island, RI, is amendment No. 2874 and that the $1.5 million in additional moneys provided in that amendment are to be made available for the acquisition of the Block Island property. Is that correct?

Mr. BYRD. Yes; that is correct.

Mr. CHAFEE. I thank the Senator for clarifying that point.

The acquisition of this addition to the Block Island National Wildlife Refuge represents one of the few remaining opportunities to preserve undeveloped coastal habitats in the Northeastern United States. Block Island is located about 10 miles south of the Rhode Island mainland and 15 miles northeast of Montauk Point, NY. The island was named by the Nature Conservancy as one of its "last great places" worthy of ecosystem conservation in the Western Hemisphere. It

serves as a refuge for plants and animals once common in New England that are now rarely seen on the mainland. It provides habitat for endangered species, including the Peregrine falcon and the American burying beetle. Block Island also serves as a critical link in the migration of many birds between southern New England and points south.

The Fish and Wildlife Service [FWS] identified Block Island as a significant coastal habitat in their 1991 report to the House and Senate Appropriations Committees known as the north east coastal areas study. This report found that the West Beach area—which is the site of both the wildlife refuge and the property which will be acquired—is of particular interest for protection.

Thus far, the FWS has acquired 46 acres near the northern end of West Beach on Block Island. Through cooperation between the FWS, the local government, and private conservation groups, including the Nature Conservancy, most of the area between the refuge and property owned by the Beane family located at the southern end of West Beach has been protected.

The Beane property, which will be purchased with the $1.5 million provided by this bill, is the missing link in providing for the conservation of the entire West Beach area. This undeveloped beach and upland now acts as a barrier between the Atlantic Ocean and the Great Salt Pond. It is one of the wildest and most remote properties remaining on the island. For these reasons, the FWS strongly supports the acquisition of this area.

Unfortunately, time to find a way of protecting this property has almost run out. The U.S. marshall seized a one-third interest in the Beane property when one of the three sibling owners was caught growing drugs on the property. The marshall has been ordered to sell the entire property on the open market as part of the settlement of the drug case. In fact the property will be advertised for sale on August 15, only 10 days from today. Time is of the essence. If this important area is to be saved, funds must be appropriated this year, in this bill. We cannot wait until next year.

Therefore, I am very grateful to Senator BYRD and the other members of the Interior Appropriations Subcommittee for their assistance in preserving this unique area before it is lost to development.

A FUTURE WESTERN WASHINGTON TRIBAL ALCOHOLISM AND SUBSTANCE ABUSE TREATMENT CENTER

Mr. ADAMS. I would like to briefly discuss concerns expressed by tribes in Washington State regarding the level of funding available for alcohol and substance abuse treatment and prevention in the budget for the Indian Health Service. As you know, alcoholism afflicts Native American populations in proportionately higher rates and has ruined countless lives spanning many generations.

The appropriate treatment for American Indian alcoholism is perplexingly elusive as the cause for chemical dependency involves a mixture of psychological, biological, social, and cultural factors. Over the last two decades, Indian Tribes have established alcoholism counseling programs on their reservations to combat this disease in their communities. A cadre of trained American Indian alcoholism counselors have begun to make progress with individuals and their families through direct, personal intervention.

The Squaxin Island Indian Tribe in Washington State, joined by 12 other tribal governments, has requested funding from the Indian Health Service to establish an inpatient treatment facility for tribal referral of individuals suffering from chemical dependency. Currently, there is a lengthy waiting period for admission to existing facilities in the Pacific Northwest.

The consortia of tribes propose a 25-bed operation for inpatient care as well as outpatient services. A key feature to their proposed treatment is representative tribal policy guidance on the center's board and the use of culturally relevant curriculum in the treatment program. The treatment center staff will have direct communication with participating tribal alcoholism programs and expect to reduce recidivism. Also, the center will be centrally located in the south Puget Sound area to improve accessibility.

My concern involves the availability of funding to support this collective tribal effort from the Indian Health Service. The Squaxin Island Tribe estimates the operational cost for the proposed inpatient treatment facility at $765,000. Are there sufficient resources in the IHS to be able to address this self-determination proposal in fiscal year 1993?

Mr. BYRD. The committee has provided a $2.5 million increase for Indian alcoholism and substance abuse programs in fiscal year 1993.

The Squaxin Island Tribe's alcoholism inpatient treatment proposal for the entire south Puget Sound region may be consistent with this objective. The IHS, using the fiscal year 1993 increase and existing resources at the area office explicitly targeted to serve south Puget Sound Tribes, should be able to respond positively to the Squaxin Island Tribe's request if that is the desire of the tribes in the area, and using only that share of the funds for which these tribes would be eligible. No Federal funds are to be used in the construction of this facility.

Mr. ADAMS. I thank the Chairman.

NORTH KAIBAB ENVIRONMENTAL IMPACT STATEMENT

Mr. DECONCINI. Mr. President, during the committee hearings, I submitted questions to both the Forest Service and the Park Service regarding planning for recreational facilities on the north rim of the Grand Canyon and the adjacent Kaibab National Forest. The answers supplied by the agencies describe a critical situation. Public visits to the north rim currently tax the capabilities of the Park Service and the Forest Service to handle the traffic and other impacts. It is projected that visitor-use days to this area will increase greatly over the next 10 years. The result is an ever increasing and almost overwhelming pressure to deal with the corresponding need for water, sanitation, power, and greatly expanded lodging and recreational facilities. Of course, with the increasing visits we also get traffic congestion, air pollution, and noise and that has to be included in any planning process.

Mr. President, the Grand Canyon is, in every sense of the word, a national park and I know the chairman and other members of the committee share my concerns.

Mr. BYRD. The Senator is correct, the Grand Canyon is truly a national treasure and an inspiration for visitors from every nation. The committee is concerned that the increasing demands be accommodated as expeditiously as possible in a way that preserves the very unique experience that only the north rim of the Grand Canyon can offer.

Mr. DECONCINI. I thank the distinguished chairman for his comments and the committee's attention to this very critical situation. As the chairman knows, the Grand Canyon Park master plan is probably 5 years from completion, but decisions are being made, with wide public support, to severely limit the development of recreational facilities on the park lands at the north rim. This will properly help to preserve that awe-inspiring and completely unique experience found from this vista.

But these decisions place increased pressure on the adjacent north Kaibab National Forest. These greatly accelerated demands make planning all the more imperative on that forest.

The existing concessions and campgrounds in the National Forest are inadequate to meet even the present level of traffic and recreation. Add the anticipated increase in demands, and the demands and impacts that will result from the Park Service decisions to severely limit development at the north rim will, without doubt, result, in significant adverse consequences.

Mr. BYRD. The Senator accurately summarizes the situation.

Mr. DECONCINI. I thank the chairman. As he knows, the Kaibab Forest plan anticipates greatly expanded, and very expensive facilities from the private sector concessionaires at both the Kaibab Lodge and Jacob Lake areas. Costs for these facilities have been es-

timated at a minimum of $10,000,000, and combined costs could easily double that figure. The costs of these required expansions will be borne solely by the private concessionaires. They will have to raise the money and make the investment. That may be difficult in this economy, but I believe it is a fair arrangement. They will eventually recoup their investment.

But there is another requirement that is also a Federal mandate. That mandate is the preparation of an environmental impact statement under the National Environmental Protection Act, usually referred to as NEPA. In answer to our questions, the Forest Service states that the required expansion of the private sector facilities "* * * may involve a wide range of resource issues that require extensive analysis. These sorts of proposals require the preparation of an environmental impact statement, [EIS] which may span a period of several years or more. Costs associated with this kind of complex NEPA analysis and documentation can exceed $250,000." Also, Forest Service facilities will have to be coordinated with the private sector development and be subject also to the EIS. Some of the utility systems will be jointly utilized.

Mr. President, the EIS in this coordinated and complicated process is both a Federal requirement and a Federal responsibility. In further answer to our questions, the Forest Service stated that when an "* * * expansion proposal involves a specific business entity, the business entity normally assumes the majority of NEPA related costs." The operative word here is "normally." I would ask the chairman if he would agree that this is not a normal situation.

Mr. BYRD. When a private business concessionaire approaches an agency, be it the Park Service or Forest Service and proposes an expansion of his facilities, the concessioner is informed of the Federal environmental requirements under NEPA. If the concessioner chooses to proceed, the concessioner has the option to pay for NEPA costs in order to expedite the completion of this process. But I agree with the Senator that the situation on the north rim is unique wherein the Federal Government, through both the Forest Service and the Park Service, is separately making decisions which rely on future developments outside the boundaries of the park. These decisions greatly complicate the resource issues subject to the NEPA process. Sufficient funding has been included in the Forest Service budget to initiate this process. The committee expects the agency to report back as soon as possible with more complete estimates of EIS and associated planning and development costs and the timeframes.

Mr. DECONCINI. I thank the chairman.

SOUTHWEST FOREST STUDY

Mr. DECONCINI. Mr. President, I believe there are very few issues, if any, which consume as much of our time and energy as the continuing conflict between resource development and environmental protection. For example, I do not believe there is a Member from any Western State, perhaps from any State, who has not spent a great deal of time looking for a resolution between development, both public and private, and the issue of endangered or threatened species. The good news is that natural resource conflicts are not always without resolution. Public lands in the West can be and usually are managed to minimize or eliminate these conflicts.

The essential ingredient in resource management, as in any conflict resolution, is information. Often the real problem is lack of accurate and dependable scientific data upon which land planning and land management decisions can be based. This committee, under the leadership of the distinguished chairman, has taken steps to address the need for information in the Southwest and elsewhere.

Mr. BYRD. I thank the Senator. In fiscal year 1992, at the behest of the Senator from Arizona, the committee initiated the Southwest Forest Study, a research, development, and application program on the Santa Fe, Coconino, Kaibab, and Dixie National Forests in the Southwest to address very critical multiresource management issues. The committee directed that a consortium of universities be selected through a competitive bidding process. The fiscal year 1992 program is underway and the committee has provided funds for fiscal year 1993 to continue that program.

Mr. DECONCINI. I thank the chairman and commend the committee for making the funds available at a time when overall funding levels are lower, and very tough decisions have to be made. I am very proud to announce that a consortium of universities organized by Northern Arizona University has just been selected to conduct the study. The institutions which will be participating are Northern Arizona University, Western New Mexico University, New Mexico State, Utah State University, Arizona State University, and the University of Arizona. I believe that I speak for my colleagues in New Mexico and Utah when I say this consortium brings together some of the foremost researchers and experts in the country on natural resources in the southwest and can provide not just data, but true knowledge which can be applied to critical resource conflicts.

Mr. DOMENICI. I would certainly agree with the statement from my friend from Arizona and would like to add that I am indeed pleased that the New Mexico State University and Western New Mexico University are a part of this research, development, and application program. The expertise and information which will be derived from the beginning of this study can be applied to resolving resource conflicts. The most immediate conflict perhaps is the issue of habitat for the Mexican spotted owl. I believe the Forest Service is now drafting a conservation strategy which will be reviewed by the United States Fish and Wildlife Service prior to their decision whether or not to list the owl as threatened or endangered. This may be one area where the consortium could play a key role. There is certainly a need for data and technical expertise in the consideration of this or any species.

Mr. DECONCINI. I certainly agree with the Senator from New Mexico. There may be a very important role for the consortium in a cooperative effort with the Forest Service and the Fish and Wildlife Service. This in fact may be an excellent opportunity to develop a cooperative demonstration program on a voluntary basis for the agencies. In this Senator's opinion, we need to explore the possibility of a total and sustainable ecosystem approach to forest management. In testimony before the committee, the Forest Service has agreed that the "[M]anagement of an ecosystem, rather than habitat for each individual species, would eliminate duplication and opposition of efforts, and would reduce the administrative requirements of developing effective management strategies." The ecosystem approach allows for the protection and recovery of multiple species which may already be listed as threatened or endangered. And even more importantly, it could provide the means to prevent species from becoming threatened. The savings would be great, both in the number of protected species, and in real dollars.

Mr. GARN. The Senator from Arizona makes a good point. The agencies, together with State agencies and the public, have an opportunity to use the scientific panel assembled through the Southwest Research, Development and Application study to closely examine these issues and provide information which would be crucial to prelisting decisionmaking. I am pleased that the Utah State University is participating in the study. The Southwest will benefit greatly from the program and I thank the Chairman and Sen. NICKLES, the ranking Republican, for their support.

Mr. DOMENICI. I would say to the agencies and to my colleagues in the Congress that we will have to address the authorization of the Endangered Species Act next year, and certainly a lot of dissatisfaction has been expressed from many quarters with the structure of the act. The Mexican spotted owl conservation strategy, or a similar situation, provides the agencies with an opportunity to cooperatively

develop a demonstration program which could lead to recommendations as to how the goals of the act can best be preserved and achieved.

Mr. DECONCINI. I thank the Senators for their comments. Although no funds have been included in the bill for the university consortium to function as a scientific review panel for a cooperative demonstration program, that may be an issue we could discuss in conference with our colleagues from the House. Again, I would thank the chairman for his leadership and support.

GAP ANALYSIS

Mr. GARN. Mr. President, I would like to direct my colleagues' attention to the language on page 18 of the committee report regarding increased funding for gap analysis. In that language, the committee recommends an increase of $750,000 over the President's request. The committee further recommends that the Fish and Wildlife Service make use of the expertise developed by Utah State University as a result of its work to date on gap analysis.

Mr. President, the College of Natural Resources at Utah State University is preeminent in gap data collection and has become a national data center for gap analysis. As my colleagues know, there is a serious need to look beyond State boundaries and coordinate efforts to facilitate conservation on a bioregional level. As the national data center, Utah State University is in need of additional funding to conduct research on innovative management approaches that conserve biodiversity while allowing for responsible resource use.

Am I correct in my understanding that the committee intends that a portion of the increased funding to be used for gap analysis work will be performed at Utah State University?

Mr. BYRD. Mr. President, the Senator from Utah is correct. The committee's expectation is that the increased funds be used to build upon existing gap analysis work, with which Utah State University has been actively involved. Rather than expending the increased funds to involve additional parties, the funds should be used to expand, to the extent possible, existing capabilities and expertise.

Mr. GARN. I would also inquire of the distinguished ranking member if that is his understanding.

Mr. NICKLES. The Senator from Utah is correct.

Mr. GARN. Mr. President, I want to thank my colleagues for clarifying this point.

SAFFORD MULTIAGENCY VISITOR CENTER

Mr. DECONCINI. Mr. President, I would like to raise a matter with the distinguished chairman of the committee. As he knows, I requested funding for the Safford Multiagency Visitor Center in Safford, AZ. As I have previously indicated to the chairman, within the immediate vicinity of Safford, AZ, there are several Federal public resource areas. These include Mount Graham, the Galiuros, Aravapai Canyon Wilderness Area and the Santa Teresa Wilderness Area, Gila Box National Conservation Area and other sites administered by the Bureau of Land Management and the Forest Service. There are also locations accessible to the public administered by the State and several Indian Tribes.

For some time there has been discussion of building a multiagency visitor center in Safford, AZ, to serve all of these areas in the upper Gila Valley and provide a contract point for all the visitors to these sites.

Presently, these discussions for a multiagency visitor center focus on a proposal for a "Museum of Discovery." Among those presently involved in discussions for the museum are the Forest Service, the Bureau of Land Management, Graham County Chamber of Commerce, Eastern Arizona College, the Phelps Dodge Corp., and the San Carlos Apache Tribe.

A steering committee has been formed and contracts are being made to secure necessary commitments of outside funds for the project.

Mr. BYRD. Will the Senator yield?

Mr. DECONCINI. I will certainly yield to the distinguished chairman.

Mr. BYRD. The Senator from Arizona did make a compelling case before the Committee for the Safford Multiagency Visitor Center. However, as he knows, because of the budget constraints the committee is operating under this year, we were not able to include funding for any new visitor centers for any of the agencies under the our jurisdiction.

Mr. DECONCINI. I thank the chairman. It is, however, important to point out the preconstruction engineering and design for the Museum would be paid for with Federal funding, but the final construction would be paid through contributions from outside sources. Total cost for the planned facility is $36 million. Costs associated with planning and initial construction designated for Federal sources are only estimated to be $6 million, with the balance of $30 million for construction costs to be raised through private contributions. Also, the BLM has been budgeted $140,000 to allow it to design and build an ecological display related to natural and cultural resources in the area.

This project represents a worthy effort to coordinate and combine efforts by public and private sectors in the best interests of the public. A central location with the integrated and interrelated exhibits and materials makes sense because it prevents unnecessary duplication yet provides visitors essential services and information opportunities.

Mr. BYRD. Again the Senator from Arizona raises outstanding points. I can tell him that if he raises this issue with the committee again next year, we should certainly consider this project.

Mr. DECONCINI. The distinguished chairman can be sure that I will again request funding for this most worthy project. I am hopeful that in the intervening period, both the BLM and the Forest Service will continue to work with the steering committee to develop this project.

NEZ PERCE NATIONAL HISTORICAL PARK

Mr. ADAMS. The President's budget requested funds to expand the Nez Perce National Historical Park to include staffing for the Old Joseph Monument Visitors Center. I support the expansion of the Nez Perce National Historic Park to designate and commemorate significant and historical sites in northeastern Oregon, Idaho, Washington, and Montana.

After the Nez Perce War of 1877, Chief Joseph and the Nez Perce Tribe were transported to Oklahoma. Due to unsanitary living conditions and an alien climate, many Nez Perce died there. Finally, in 1885, Chief Joseph and the Nez Perce were allowed to return to the Northwest. Although they could not go back to the Wallowa Valley in Oregon, they were placed on the Colville Indian Reservation in Nespelem, WA. Chief Joseph died there on September 21, 1904.

In the State of Washington, the National Park Service has identified the winter and summer campsites of Young Chief Joseph, and his final grave site. It is my hope and intention that this authorizing bill will pass soon and we can further clarify the intent of the expansions proposed in the President's Budget. I would like to request that the Senate conferees have the opportunity to address the expansion of these sites when the Interior appropriations bill goes to conference with the House of Representatives.

Mr. BYRD. Mr. President, I would respond to my friend from Washington that in the event authorizing legislation is enacted expanding the Nez Perce Park, funds provided in the act can be used for the additional sites within the allocation made by the National Park Service to the Nez Perce Park.

BATTLEFIELD OF CORINTH

Mr. LOTT. Mr. President, the battlefield of Corinth is a significant part of our Nation's history. Corinth was the scene of a monumental battle during the War Between the States. The Battle of Corinth, the largest to take place in Mississippi, and the siege of Corinth, both rank, in terms of aggregate numbers of troops involved, among the

largest in the history of the Western Hemisphere. I have drafted an amendment which proposes $135,000 for archeological surveys, studies, and exhibit designs for an interpretative center. However, I understand that the committee has adopted a policy that no new visitor centers be funded due to limited funds.

Mr. COCHRAN. Corinth was the Confederacy's only East-West link; here the Memphis and Charleston Railroad crossed the critical Mobile and Ohio Railroad. These were the two longest railroads in the South, and this junction eventually acquired the nickname "crossroads of the Confederacy." The possession of Corinth was the key to victory during the War Between the States because of the railroads.

Mr. NICKLES. As I understand, the Corinth battlefield and the site of the Corinth siege, they are the only sites in Mississippi included on the Secretary of the Interior's list of priority Civil War Battlefields. They are 2 of the 25 endangered battlefields identified for immediate action by the Secretary of the Interior. These sites are now threatened by urban encroachment due to residential development and rezoning. What actions would be necessary to protect this site?

Mr. LOTT. The National Park Service has prepared a prospectus for Corinth, with the first step in protecting the battlefield to be the completion of an indepth plan with a series of specific alternatives for preservation and acquisition. To begin preparation of the plan certain resource information is needed. This includes archeological studies and interpretive designs that would be prepared in consultation with local officials and the city of Corinth.

Mr. BYRD. Due to limited funds, the committee was unable to provide funds for the entire amount of the battlefield request. However, the committee did increase technical assistance to local communities working on battlefield protection by nearly $900,000 above the base. We understand the need for this planning to begin for the Corinth battlefield site and other projects like it. We will work during conference so that the Secretary of the Interior will use the funds provided to give technical assistance to local communities like Corinth for archeological surveys, studies and interpretive designs.

Mr. COCHRAN. We thank the chairman for his attention to this item, and we appreciate all that has been done for Mississippi in the past.

SALVAGE SALES

Mr. HATFIELD. As the distinguished chairman of the Appropriations Committee knows, some of the national forests in the States of Oregon and Washington have been decimated by insect infestation, disease, and other natural disasters. As a result, there is a large volume of dead and dying timber which should be made available for sale under the Forest Service's salvage sale program.

In light of the many problems the forest products industry and its workers face in the Pacific Northwest regarding the spotted owl and various Federal court injunctions, I am eager to free up some of the salvage volume for sale to Oregon sawmills.

However, I also am concerned that proper care be taken during salvage operations to protect the long-term health of the forest. In particular, I am concerned that salvage activities be carefully managed not to harm sensitive riparian areas which serve as important habitat for threatened and endangered salmon, other fish species, and other forms of wildlife.

Accordingly, I believe that the Forest Service must ensure that parameters are established for forest health restoration and salvage activities which specify methods of protecting sensitive fish and wildlife habitat in these damaged areas.

Mr. BYRD. I agree with the Senator from Oregon. The Forest Service needs to identify and protect those sensitive riparian areas and take the necessary measures to return them to a healthy condition. What measures does the Senator from Oregon have in mind to accomplish this objective?

Mr. HATFIELD. To begin with, the Forest Service should salvage only dead or dying trees. Buffer strips along streams should be designed appropriately to meet site-specific needs, particularly with respect to water quality, fish habitat, long-term stream channel function, and the overall health of the watershed.

As the chairman knows, Speaker FOLEY and I recently requested the Secretary of Agriculture to conduct a comprehensive review of forest health restoration health requirements, and this study is to be completed next spring. We expect the Forest Service, together with its sister resource agencies, will fully evaluate the study, and include recommendations to the Congress which identify additional actions necessary for adequate protection of damaged watersheds in these areas. Such recommendations could include, but not be limited to, evaluation of soil erosion, the need or impact of new road construction, advanced hydrological recommendations, temperatures, and flow levels, among other measures.

Mr. BYRD. I agree with the senior Senator from Oregon, and the committee expects the Forest Service to fully protect forest health, endangered species requirements, and other forest resource values while still meeting the economic and human needs of our communities.

Mr. HATFIELD. I thank the distinguished chairman of the Appropriations Committee for clarifying the Forest Service's responsibilities in this area.

NET RECEIPTS

Mr. WALLOP. Mr. President, I would like to ask the chairman a question regarding a provision in the interior appropriations bill which revises Federal law to require States to pay a portion of the Federal administrative costs for mineral development on public lands. I do appreciate the hard work by the chairman, the ranking member, and their staffs on this matter.

Recently, the chairman and I were involved in rather intense, but ultimately fruitful, negotiations regarding the rescue of the United Mine Workers retirees health ir ·rance program. This was an issue of great importance to the State of West Virginia due to the large number of retired coal miners. Therefore, I think my colleague from West Virginia will understand my passion about the issue of administrative cost share for mineral receipts because of the impact on my State of Wyoming.

The diversion of payments under the State share to cover Federal administrative costs is a severe blow to Wyoming's resources. Being a public lands State, Wyoming is denied tax revenues from much land and resources in the State. When mineral receipts are diverted to federal administrative costs, every community in Wyoming suffers. Funds are denied for our children's education, our transportation system, police and fire protection, and other basic services.

The authorizing committee, the Senate Energy and Natural Resources Committee, authored the Federal statute which prohibits any cost share. The position taken by the Interior Appropriations Subcommittee on mineral receipts is to require the States to share 25 percent of the costs. While this modifies the position than the authorizing committee, it is much closer to that position than the language included in the House Interior appropriations bill. That bill requires 50 percent cost share. I would therefore seek the assurances of both the chairman and ranking member that they will vigorously defined the Senate position at conference.

Mr. BYRD. I appreciate the Senator's point of view and I can assure him that I will make every effort to uphold the Senate position.

Mr. NICKELS. I would join in the chairman's remarks.

Mr. WALLOP. I thank my colleagues for their help on this. For next year, the administration assures me they will pursue this matter through proper channels. That is, if they seek administrative cost sharing in future years, they will do so by recommending to the authorizing committee a change to the Mineral Leasing Act of 1920 rather than including it in the President's budget proposal.

ADVANCED BATTERY RESEARCH AND HYBRID VEHICLES

Mr. KASTEN. Mr. President, I understand this legislation includes a provision to grant limited protection of proprietary information developed in the electric and hybrid vehicle research program. I support the committee's action, and believe this will help advance our technology.

Mr. BYRD. That is correct. We do provide a 5-year protection for trade secrets on commercial or financial information that is privileged or confidential if that information is developed through the U.S. Advanced Battery Consortium [USABC] or through the proposed hybrid vehicle propulsion development program. These protections only apply to these two specific programs.

Mr. KASTEN. I do have a question about who can participate in these programs. It is my understanding that it is not the committee's intention to either restrict or select who is eligible to participate in this program.

Mr. BYRD. It was not the committee's intent to limit or restrict eligibility in the USABC, nor is it the committee's intent to limit or restrict participation in the proposed hybrid vehicle propulsion development program. We do recognize the need for a selection process, but it is not the intent of the committee to make these selections by the Congress. With regard to the advanced battery work which is being funded through the USABC, the USABC requested proposals for advanced battery research. The deadline for those proposals has passed and the USABC has entered into at least one contract as a result of those proposals. It is my understanding that more than 40 proposals were received and that the competition was open and competitive. Negotiations with successful proposers are currently taking place.

It is expected that battery manufacturers will be part of the competitive consortia formed through the hybrid program and participation will not be limited to those selected through the USABC.

Mr. KASTEN. I thank the distinguished chairman.

PONY EXPRESS VISITOR CENTER

Mr. DOLE. Mr. President, I have been told by the Senator from Oklahoma that, because of a tight budget allocation, the Interior Subcommittee was unable to fund any new visitors centers this year. Well, I think that is a good rule. It is time we start making some tough choices around here.

Unfortunately, I think the subcommittee may have wrongly ruled out one of my requests by applying this rule too strictly. The project is a visitor center at the pony express station in Hanover, KS. This is not a new project. The Senate provided $150,000 for a feasibility study in the fiscal year 1991 Interior appropriations bill.

The Park Service completed this feasibility and planning study in March of this year. The study concluded that, as the only remaining unaltered pony express station, the Hollenberg Pony Express Station is a nationally significant property that is a target destination for people following the route of the pony express. The Park Service recommended that because of the site significance, a visitor center should be built at the Hollenberg Pony Express Station.

It is my hope that the subcommittee would consider providing either $2.2 million for the design and construction of a visitor center or $235,000 for the design alone.

This is a very reasonable cost for a visitor center. Once it is built, the operation of the center would be funded and managed by the State of Kansas through a cooperative agreement.

I apologized for not coming to the subcommittee earlier with this request, but the pony express national trail bill was just signed into law on August 3, 1992. I did not feel it was proper to move ahead with a visitors center until the trail was recognized as a national trail.

Mr. NICKLES. The subcommittee has had a number of requests for visitor centers this year and we have set some tight restrictions to narrow the list. Since we are unable to do anything this year, I can assure you we will give this project priority next year.

Mr. DOLE. I appreciate the Senator's support of this project and look forward to working with him next year to fund the pony express visitor center.

AMENDMENT NO. 2901

Mr. SANFORD. I rise today for a moment on Senator FOWLER's amendment offered last night regarding below-cost timber sales. It was with great care and caution that I cast my vote against that amendment.

Senator FOWLER is unquestionably sincere in his efforts to improve national forest management. While I do not always agree with the proposals of the Senator from Georgia, I certainly do share his interest in forest management policy reform, and I have supported him on a number of issues, including the two votes today regarding the Forest Service administrative appeals process.

I agree with the Senator from Georgia that we must reduce below-cost timber sales. I have strongly encouraged the Forest Service to accept the input of all parties that are sincerely interested in, and knowledgeable about, forest management reform in order to try to gain some consensus on timber sale procedures and surrounding issues. The Forest Service appears to be making progress, but I realize that more must be done.

Last night, Senator FOWLER offered language to reduce the timber sales preparation account by $35 million. The argument behind this amendment reasons that this reduction in funding would reduce below-cost sales by 25 percent. I certainly want to reduce below-cost sales, but I could not support the Senator's amendment.

It helps to put this amendment in perspective. I would, therefore, note that in fiscal year 1992, $124 million was provided for the timber sales preparation account. For fiscal year 1993, President Bush proposed $109 million for this account, and the Senate Appropriations Committee reduced this amount by $16 million, for a figure of just over $93 million. I believe this reduction of approximately 25 percent from fiscal year 1992 to fiscal year 1993 is a responsible step in reducing the timber sales preparation account and in reducing the below-cost sales.

Given the Senate Appropriations Committee's recommended level of funding, it would have been irresponsible of me to vote for an additional reduction of $35 million this year. Such a reduction would have undoubtedly adversely affected those individuals in my State of North Carolina, and others across the Nation, who depend upon Forest Service sales for a significant portion of their income. Had the amendment prevailed, many worthy potential sales, not just below-cost sales, would undoubtedly have been delayed or never be acted on. Such a drastic cut in one year might go beyond the fat and to the meat of the timber sales program.

I am a strong believer in the multiple-use of our forests, including the need to meet the demands of timber harvesting, recreational opportunities, and wildlife habitat preservation. I could not, and can not, vote for a policy that would suddenly cripple any of these goals. While the Forest Service accounting process is undergoing significant review, and it is appropriate to send a message to the service that it must run a tighter ship, we should not pull the rug out from under the agency in one appropriations cycle.

To Senator FOWLER I must say that I appreciate his efforts and I hope to work with him to address the below-cost issue in the future. I will continue to work for reasonable reform to make the timber sales process more cost-efficient.

AMENDMENT NO. 2902

Mr. SANFORD. Mr. President, I rise in strong support of the appeals amendment offered by my colleague from Georgia, Senator FOWLER.

I have expressed concern many times to my constituents over the announcement earlier this year by the Secretary of Agriculture to begin proceedings that might do away with meaningful public input into the management of our national forests. The amendment offered by my friend from Georgia is only necessary because of this action by the Department of Agriculture.

Since my colleagues have spoken at length about the specific content of the Fowler amendment, I will only make a few brief remarks regarding my reasons for supporting this measure.

Let me state briefly that I support sustainable yield harvesting of timber on our national forests and realize that our forest system was originally established to provide this Nation with a long-term timber supply. However, Mr. President, we are talking about public land, purchased and managed at the taxpayers' expense. I have consistently supported efforts to ensure that the public is not removed from this management process.

Citizens, whether they be acting on behalf of themselves, a local government, a sportsmen's group, or a conservation organization, deserve the right to request clarification of the legal requirements and soundness of decisions handed down by the Service. It doesn't seem unreasonable to, in the words of the Office of Technology Assessment, encourage "more responsibility and accountability on the part of deciding officers. * * *" Accountability on the part of our government is not something we should be discouraging.

I find it difficult to believe that the elimination of project-level appeals will save the government time and money. Under the Forest Service's current proposal, those who find fault with project decisions must carry their grievances to court. We all know the costs incurred by all parties involved in a lawsuit, and we all know how long it takes for the cogs of our legal system to turn—the winners are generally the lawyers. It seems reasonable to have the Forest Service, with its professional staff, review most of these matters internally.

I have been straight with my colleagues and constituents about the problem of frivolous appeals. Several of my friends in the Senate have pointed out examples of this problem. The actions of those who file appeals with no other purpose than to thwart the business of the Forest Service should not be condoned. However, Mr. President, if the problem is frivolous appeals, then let's address this problem directly. The Service is, instead, about to throw the baby out with the bathwater. The Fowler amendment will keep this from happening.

My colleague from Georgia has spoken about his concern over how this proposed new Forest Service policy came to be announced, and he has mentioned that a recent Service review of its own appeals program has received limited attention within the Department of Agriculture. Whatever the case may be, it is essential that, within our open form of government, the taxpayers be given legitimate input into those Forest Service decisions which must seek to balance the interests of timber, wildlife, and recreation.

I hope my colleagues will support me in denying any effort to table the amendment by the junior Senator from Georgia.

AMENDMENT NO. 2904

Mr. SANFORD. Mr. President, I rise in opposition to the Gorton amendment on the sale of salvage timber.

Congress devised the National Forest Management Act, the National Environment Policy Act, and the Endangered Species Act with the input of scores of citizens, scientists, and other professionals. Several proposals are now before House and Senate committees which require a reevaluation of these laws.

I am not comfortable with this proposal, which sounds fine on the surface, but effectively gives the Forest Service the authority to violate or suspend standing statutes. Not only does this amendment confront existing environmental laws, it also appears to override an existing court injunction which calls on the Forest Service to complete a sound management plan to preserve Northwest wildlife habitat.

In addition to those arguments which point out the impact that salvage sales may have on wildlife habitat and the threat of fire in our forests, this amendment simply represents bad public policy in my opinion.

As the Department of Agriculture has testified to the fact that the Forest Service presently has sufficient authority to conduct salvage timber sales in our national forests, I urge my colleagues to support the motion to table the Gorton amendment.

Mr. BYRD. Mr. President, I ask that the Senate proceed to third reading.

The PRESIDING OFFICER. The question is on the engrossment of the amendments and third reading of the bill.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read a third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill pass?

So the bill (H.R. 5503), as amended, was passed.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the bill, as amended, passed.

Mr. NICKLES. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BYRD. Mr. President, I move that the Senate insist on its amendments, request a conference with the House on the disagreeing votes, and that the Chair be authorized to appoint conferees on the part of the Senate.

The motion was agreed to and the Presiding Officer appointed Mr. BYRD, Mr. JOHNSTON, Mr. LEAHY, Mr. DECONCINI, Mr. BURDICK, Mr. BUMPERS, Mr. HOLLINGS, Mr. REID, Mr. NICKLES, Mr. STEVENS, Mr. GARN, Mr. COCHRAN, Mr. RUDMAN, Mr. DOMENICI, Mr. GORTON, and Mr. HATFIELD conferees on the part of the Senate.

Mr. BYRD. Mr. President, once again I want to thank all members of the Appropriations Committee and all Members of the Senate for their patience. I especially thank my counterpart on the Appropriations Committee on the Department of Interior, Mr. NICKLES. He is a fine Senator, and I am exceedingly proud of my good relationship with him.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized.

Mr. NICKLES. Mr. President, I thank my friend and colleague, the chairman of the subcommittee and chairman of the full committee, Senator BYRD, for his leadership. We have had an excellent working relationship. I believe we came up with a very good bill, one that has less than 1 percent growth in budget authority and outlays.

I might mention if you took out the increase for Indian health service, it would have zero percent growth. And that was not easy to do in light of the fact we had thousands of requests for special projects.

I also wish to thank the staff on both sides, particularly Sue Masica and Cherie Cooper, for doing one outstanding job.

VOTING RIGHTS LANGUAGE ASSISTANCE ACT

The PRESIDING OFFICER. Under the previous order, the clerk will report the bill H.R. 4312.

The legislative clerk read as follows:

A bill (H.R. 4312) to amend the Voting Rights Act of 1965 with respect to bilingual election requirements.

The Senate proceeded to consider the bill.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. SIMON. Mr. President, I do not see my colleague, Senator SIMPSON. I would like to enter into an agreement that only a certain number of amendments would be in order. But I will hold off doing that until Senator SIMPSON is on the floor.

I am pleased to speak in behalf of the extension of the Voting Rights Act, of the language assistance amendments. And I am pleased to say we have 30 sponsors of this legislation. My principal cosponsors are Senators HATCH, DECONCINI, SPECTER, KENNEDY, INOUYE, MCCAIN, DASCHLE, DURENBERGER, CRANSTON, BINGAMAN, WIRTH, METZENBAUM, DIXON, WELLSTONE, MURKOWSKI, PACKWOOD, WOFFORD, AKAKA, KASSEBAUM, BOREN, MITCHELL, HARKIN, GRAHAM, BRADLEY, DODD, D'AMATO, LEVIN, ADAMS, and CHAFEE.

We are meeting on August 6. This particular portion of the Voting Rights Act expires August 6, 1992. It could hardly be more timely that we meet tonight. Back in the early 1900's, as the

U.S. Supreme Court ruled, the protection of the Constitution extends to all, to those who speak other languages as well as to those born with English on the tongue.

What we have experienced with a limited amount of experience on the language assistance portion of the Voting Rights Act is that it has encouraged more people to vote and it has particularly been of help to older Americans.

We will jeopardize the means by which hundreds of thousands of limited English-speaking U.S. citizens will exercise their right to vote in the November election if we do not pass this legislation.

It is particularly designed for the Hispanic, Asian-American and Native American communities.

Enactment of this legislation, as I indicated, is extremely timely, but it is timely also in the fact that we are heading soon toward an election. California's chief elections officer, Secretary of State March Fong Eu has written to me with some urgency about this legislation. She states that "any significant delay will increase the cost of compliance and could interfere with the right of the franchise itself." She concludes very powerfully, "We need to know now."

The right to vote in the United States has generally been expanded through our history with one exception, and that exception is early in our history noncitizens generally had the right to vote. Today, there are still a few jurisdictions where noncitizens can vote, but generally it is only citizens who have the right to vote.

Two hundred years ago, you had to be 21, you had to be white, you had to be male, and in many jurisdictions, you had to own property. We have expanded the right to vote, and we are a better country for it.

The Voting Rights Act of 1965 focused primarily on electoral discrimination against African-Americans in the South. But in 1975, we expanded the Voting Rights Act to cover those groups where they comprised at least 5 percent of a local jurisdiction's population.

In those jurisdictions, English-only election procedures were supplemented with oral and written assistance in the language these U.S. citizens knew best, be it Spanish, Navajo, Chinese, or another, along with English.

Let me add again, it is the older Americans, and a majority of them native-born Americans, who are beneficiaries of this. American Indians who need help are Americans, just as much as any of us. Puerto Ricans who need help are Americans, just as much as any of us.

Hispanic voter registration increased 83.4 percent from 1976 to 1988, almost four times the 21 percent increase among the general population. We see more Hispanic, Native American, and Asian American elected officials than ever before.

The Judiciary Committee—I have great respect for my distinguished colleague, Senator SIMPSON—but the Judiciary Committee passed this legislation out by a 12-to-2 vote. This authorizes a 15-year reauthorization. So it expires with the rest of the Voting Rights Act.

Language assistance voting is not new. It is not untested. We have had a good experience with it. Language minority citizens see a difference in their daily lives when they are able to participate.

Suddenly, elected officials become more responsive when people vote. That is nothing new to any of us. And it is one of the reasons, frankly, that Puerto Rico, for example, gets short shrift: Because the U.S. Senate does not need to pay attention to Puerto Rico. It is why the District of Columbia too often gets short shrift. When people vote, there is more attention paid to them.

Larry Echo Hawk, who is now the attorney general of the State of Idaho, and I believe the only Native American who is a statewide elected public official in the country right now, testified about the real difference the language assistance in voting has made to Native American residents of his State.

He told the Constitution Subcommittee that Indian leaders had experienced difficulty in attracting the interest and attention of State and county elected officials. After some initial resistance, the county provided Indian-speaking deputy registrars and poll workers. Election day 1984 was a very special experience. There was a record turnout of Indian voters. Many Indians, including several tribal elders, voted for the first time ever in a State election.

On the island of Puerto Rico, you have voter participation that is regularly above 80 percent. But here on the mainland, language is clearly a barrier.

Under the current law, Hispanic and Asian American communities in Los Angeles, New York City, Chicago, Philadelphia, San Francisco, and other cities are not covered by the current 5 percent in the Voting Rights Act. There is a significant gap between the voting participation rate of Hispanic U.S. citizens and the general population where we do not have language assistance.

In the State of Illinois, for example, where we have not had language assistance under the act, the Hispanic voter registration rate is less than half of the rate among Anglo voters.

On the other hand, in the State of New Mexico, where bilingual voting has been the rule since statehood in 1912, the Hispanic voter registration is 85 percent of the Anglo rate. And in the State of Texas, the Hispanic voting registration rate is 65 percent of the Anglo rate.

The typical voter, as I indicated,who benefits from this is someone who is of limited background in terms of education, usually not a high school graduate, an older citizen. But the majority are native-born U.S. citizens.

The General Accounting Office reported in the 1984 general election in 1,102 Texas precincts, one-quarter of Hispanic voters used bilingual voting material. These voters accounted for 9 percent of the total voters in these precincts. Oral assistance at the polls was used by 32 percent of Hispanic voters; 12 percent of all voters in these precincts.

Asian Americans are the fastest growing ethnic group in the Nation. Some like to consider Asian Americans as the model minority, but that perhaps well-intentioned moniker masks real challenges facing that community.

The U.S. Commission on Civil Rights, in its comprehensive 1992 report on the Asian and Pacific Islander community, made very clear the need for language assistance in voting.

According to the Commission's report, limited English proficiency is a serious barrier to the political participation of many Asian Americans.

Census figures reveal 69 percent of all Laotians now living in the United States do not speak English, as well. The same is true for 38 percent of Vietnamese; 24 percent of Koreans; and 23 percent of Chinese.

I would like to also mention the area of cost, because that has been mentioned. First, we are talking about a fundamental right in the right to vote. Even if it were very expensive, it is something that I think we should address. But the reality is that it has cost 4 to 7 percent, on the average, of the costs in the various jurisdictions.

In San Francisco, for example, a city that has elections in three languages—Chinese, Spanish, and English—bilingual election amounts to just 5 percent of the total cost; 21 percent of the population in San Francisco speaks Chinese and 12 percent Hispanic.

I might add, Mr. President, I have here, for any Member who would be interested, the sample ballot from San Francisco, if any Member wants to see it.

And you have it in English, in Spanish, and in Chinese, all in one line—it is not that complicated; not that complex; not that difficult. We are not talking about a huge burden for these various election jurisdictions.

The administration agrees that a numerical trigger is necessary and important, and an important adjustment to the current coverage formula. They frankly favor 20,000 rather than the 10,000 that we have in this bill. But I am pleased that Senator HATCH and others in the committee agreed on the 20,000 figure.

Finally, Mr. President, there is no question that to function effectively in

our society, you need to speak English, and we ought to encourage that.

But in San Francisco right now, 12,000 people are on the waiting list to get into classes to speak English. In Los Angeles, it is 30,000.

I ask unanimous consent to have printed in the RECORD, Mr. President, an article from the San Francisco Chronicle. The heading is "Thousands Shut Out of English Classes in California Schools."

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the San Francisco Chronicle, Nov. 5, 1991]

THOUSANDS SHUT OUT OF ENGLISH CLASSES IN CALIFORNIA SCHOOLS

(By Louis Freeberg)

With English language classes filled to capacity, tens of thousands of new immigrants to California have been unable to sign up for English courses at community colleges and adult schools.

The shortage of the language classes has raised concerns that many in the state's burgeoning immigrant population will have a more difficult time coping economically and in this society in general.

"It will make them less employable and less capable as people," said Renato Rosaldo, an anthropologist at Stanford University. "What I see is that there are a lot of people falling through the cracks."

According to officials, there are waiting lists for English as a Second Language, or ESL, classes at the majority of the state's 107 community colleges, which serve more than 75,000 immigrant students.

"We could serve twice as many students as we are serving now if funding were available," said Saeed Ali, a vice chancellor of the California Community Colleges.

He said getting an exact count of the need is difficult.

"Often waiting lists are so huge and so long that it doesn't make sense to keep them," he said.

WHAT ADMINISTRATORS SAY

Officials say their inability to expand adult classes for immigrants is tied to the state's budget crisis, which has frozen or cut back on financing to community colleges and school districts. Many have already stretched their resources by providing classes for which they are not reimbursed by the state.

"The demands are expanding fantastically," said Irving Weinstein, vice chancellor of the Los Angeles Community College District. "And with budgets shrinking, it's going to be an even worse problem in the future."

In San Francisco alone, more than 12,000 people are on the waiting list at six campuses of City College, where enrollments, in ESL classes total about 25,000.

In Los Angeles, at least 30,000 students are on waiting lists at both the Los Angeles Community College and in classes run by the Los Angeles schools. At adult classes at the Eastside Union High School District in San Jose, 2,832 adults are enrolled in ESL classes, and an additional 2,600 are on waiting lists.

A survey conducted two weeks ago by the Eastside district of adult programs in 10 surrounding districts found that immigrants had tried unsuccessfully to get into classes in seven of them.

The problem is apparent at the crowded Alemany campus of the San Francisco City College on the corner of Van Ness Avenue and Eddy Street, where ESL classes are filled to capacity. During the past five years, not only have enrollments climbed, but the average number of students in each class has crept up from 24 to 29 per class.

Almost 7,000 adults have signed up for ESL classes, and an additional 2,214 are still on the waiting list.

In the counselor's office of the old elementary school that now serves adult students, a blackboard with a listing of dozens of ESL classes is covered with yellow stickers indicating that the classes are either closed or drawing students from the waiting list.

Counselor Sharon Fain said the waiting list is deceptively short. She says many students do not bother to sign up because they have heard from family members that classes are full. Others are turned away without being given the test.

"We could easily have twice as many teachers and classes," she said. "My sense is that there are many thousands of people who we could be serving that we aren't."

On the second floor of the old school, instructor Bob Nelson, now in his 27th year as an instructor, coaches his beginning English students. Each class is two hours long, and students are expected to attend each day of the week.

"You can say "he likes swimming' but you can't say 'he likes eat'," Nelson explains to his attentive class. Fifteen are Asian, and 11 are from Spanish-speaking countries. Most came to the United States during the past year and a half, and only 10 had ever studied English before signing up for classes here.

Guillermo Romero, a 35-year-old Colombian, came to San Francisco less than two years ago hardly speaking a word of English. "I arrive on a Monday, and on Thursday I was taking classes here," he recalls. Since then he has taken classes steadily, and has leapfrogged into the highest level of ESL instruction.

Maya Kuznetsova, 52, a Soviet Jewish immigrant and a part-time housekeeper, says she started with "zero" English when she arrive two years ago.

David Nguyen has been in the United States for 10 years, but he only started taking classes this year.

"If I had been here earlier, my English would be better," said Nguyen, a former officer in the South Vietnamese army who was imprisoned for five years by the Vietnamese government.

Kenji Hakuta, a professor of education at Stanford University, said, "Immigrants are the first to realize the value of these kinds of classes."

He said expectations that immigrants can pick up language skills on their own is unrealistic.

"Language acquisition is a complex process, and there is nothing that can beat getting formal instruction."

Mr. SIMON. Mr. President, I appreciate the help of a great many people. I particularly appreciate the help of the chairman of the full committee, Senator KENNEDY, and Senator HATCH, who is not able to be with us this evening because of an illness in his family.

Before I yield the floor, Mr. President—and I have not had a chance to talk to Senator SIMPSON about this—but I wonder if we could agree on a limitation.

I believe the Senator has three amendments. Is that correct?

Mr. SIMPSON. What is correct.

Mr. SIMON. Mr. President, if we could agree that there could only be three amendments offered by Senator SIMPSON; one amendment offered by Senator BROWN; and no further amendments other than those amendments.

Mr. SIMPSON. Mr. President, we struck that unanimous consent agreement to do just that. So we are ready to proceed.

Some have indicated to me that they wished an opportunity to amend.

The PRESIDING OFFICER. The Chair informs the Senators that the agreement was entered into previously. It is the order.

(Mr. AKAKA assumed the chair.)

Mr. SIMPSON. I certainly concur and agree fully with the Senator from Illinois.

Mr. SIMON. All right. Mr. President, I yield the floor.

Mr. SIMPSON. Mr. President, to discuss this is obviously a bit difficult to do, perhaps probably the most politically incorrect thing to do, but I want to share with my colleagues some very serious concerns. I hope we all understand that what we are addressing here is not a civil rights bill, which has all the connotations of sparks and fire and racism, and all the stuff that goes with this kind of a debate. This is not a civil rights bill. Some are portraying it that way—not the proponents, but others out there known as "the groups," which is a sinister phrase in itself. It is not a civil rights bill. It is a bilingual ballots bill.

I oppose this bill in my own complete good faith, because I truly believe that it will actually promote divisiveness rather than inclusion, rather than cohesion.

It certainly will not happen with my friends, Senator SIMON and Senator KENNEDY. The three of us happen to constitute one of the smallest subcommittee in the Senate, the Subcommittee on Immigration and Refugee Policy. There are only three of us. Senator KENNEDY is chairman, Senator SIMON, and I am the ranking member. I think that is because no one else likes to even get involved in these issues. Our chairman, Senator BIDEN, and our ranking member, Senator THURMOND, allow us to proceed in these tough issues of immigration, refugee policy, funding of refugees, issues of illegal immigration, legal immigration, restrictions, allocations.

These are difficult things, but I trust that we will not be drawn into any ugly suggestions of racism. Certainly, it will not come from my colleagues on the subcommittee, because we all get quite enough of that in our line of work in this place.

As I have often said—and I know it is tedious to many, and I know you all tire of it—I have been here 13 years plus, and I have watched continually how the deft use of emotion, fear, guilt,

or racism is used to pass or kill a measure. "So it was in the beginning, is now, and ever shall be," we say in our faith. Let it be clear, too, that this is not a stall on my part, and I know Senator SIMON and Senator KENNEDY will agree. I see the groups, as we call them, have indicated that I was up to something like that. That is not true. You will see that, indeed, it is not true.

I want to thank the fine majority leader. He has been very helpful. I know there has been a great deal of pressure from the groups to press forward, regardless of intent or content or anything else, or even discussion to try to wrap this one up. He has given me the opportunity to express myself here in a brief period of time, as has Senator SIMON, as has Senator KENNEDY, the chairman of the subcommittee.

So I just say that this amendment would extend what I consider, and others out in the land at least—there will not be many here that will surface on this one. This is very politically incorrect to dabble in this mystery right here, and that is why I want to dabble with it for a little bit of time.

This amendment would extend what I consider to be an ineffectual provision of the Voting Rights Act, which is the bilingual ballots provision, for another 15 years. I had hoped that we could examine it and let it be extended for 5 years or 10, not 15, especially when for 17 years it has proven to be, I think, ineffectual.

Let me say that I do not believe in any way that the proponents do not feel strongly that it will increase voter participation via minority language groups and bring them more fully into the political system. I do not question in any way the good will or good faith of my colleagues who sponsored this bill, but I do fear—and I share with my colleagues—that these provisions will do more to separate than to include.

I believe we must be very, very careful when we treat certain groups special. In some cases, the end may justify special treatment, but in others, such as in the case of bilingual ballots, the special treatment that they provide has not been shown to result in greater participation of language minorities in the voting process.

My concern about the bill comes, in part, from my participation in this area of immigration and refugee matters for 12 years. In 1986, I sponsored an immigration bill with a highly successful legalization program. It brought nearly 3 million additional new immigrants into a legal status in the United States, into the fabric of our Nation where they could no longer be exploited or used. I had a tough time hauling the water on that, but we got it done, thanks to the help of a lot of thoughtful Republicans and Democrats, because the only avenue for the legalization of these 3 million was the bill. Yet, the groups resisted the passage of the bill, which was a totally selfish and rather repugnant act, I thought, as I observed it take place. That is history.

Then, in 1990, Senator KENNEDY and I cosponsored an immigration bill which increased legal immigration to this country by nearly 40 percent—we took some rocks on that one—the largest single increase in our country's history. But we got reform and changes in the preference system, and we got some things that made a difference, and it is on the books. So, as a result, immigration now to the United States is at an all-time high. We will admit, legally, more than 800,000 newcomers to the United States this year alone. People are observing this, especially in times of their own extremity, in times of their own jobs at stake. They are watching very carefully, not in a racist way, just in a way of surviving.

So we will take in 800,000 newcomers this year alone. Hundreds of thousands more will enter illegally still and remain in this country, until we do something with the identifier systems. I think, without putting any type of pressure on my colleague, I think Senator SIMON agrees that some type of universal identifier, which is not intrusive, not carried on the person, not used for law enforcement, not used for any other purpose than presentation at the time of new hire, is something to consider.

I will not take him any deeper into that pit this evening, but we will discuss that at a future time, indeed. Again, that is something that is not maybe PC, but let me tell you it is very important if you want the systems to work with existing legislation that we have.

So with what is coming legally and illegally, because of the lack of proper identifiers and total fraud within the system of what is presented, we will raise the total annual immigration to more than 1 million persons this year.

With legal immigration at record rates, we have to pay, I think, clear attention to the integration and assimilation of these new Americans. Those are not nasty words. Assimilation and integration never have been flash words or charge words and, yet, they seem to be somewhat now. That is not my intent. We really do not ask very much of a new immigrant to this country, but one thing we do expect of them is that they accept our system of government and our common language and a common flag. I refer to this as our public culture. What they wish to do in their private culture is nobody's business.

It is particularly important that we insist upon this acceptance of our public culture if we expect the majority of American people, the majority of American people, to continue to support—and I do not know that they will much longer support—continued large-scale immigration to the United States.

In my mind, the surest way to encourage xenophobia, fear of foreigners, which is all over the continents of the world now—people run in various countries as xenophobes, as foreign baiters, and they win tremendously increasing amounts of the ballot strength in each country. Very disturbing.

But in my mind the surest way to encourage xenophobia and ethnic prejudice is to encourage the growth of enclaves in the United States where English is not the common language, which is the language of commerce, the language of Government, and the language of jobs. The language of employment is English.

The late Theodore White, the great author and the man I got to know somewhat, wrote to me during the consideration of the 1986 Immigration Reform and Control Act, saying that he considered—this is Teddy White— he considered bilingualism and biculturalism to be the greatest threats that our country faced. That is Theodore White, "The Making of a President," a chronicler of our times.

Similarly, the deeply loved and respected author, James Michener, who is a personal friend of mine—I met him many years ago when he was writing "Centennial." He has studied and written about most of the societies and peoples of the world, and faiths and ethnic groups. He has been a guest in my home and I in his. We have personally visited many times about his concern that bilingualism seems to be permitted or to be encouraged in so many forms in the United States.

I think Senator KENNEDY will remember, as we dealt with this bill twice before, James Michener in the gallery observing the Senate activities, and I remember that very well.

Arthur M. Schlesinger, Jr., who is not unknown to my colleague from Massachusetts because of his remarkable work with the Senator's brother, in his recent book, Arthur Schlesinger, Jr. said—this is the book entitled "The Disuniting of America, Reflections on a Multicultural Society." And he writes:

> What happens when people of different ethnic origins, speaking different languages and professing different religions, settle in the same geographical locality and live under the same political sovereignty? Unless a common purpose binds them together, tribal hostilities will drive them apart. Ethnic and racial conflict, it seems evident, will now replace the conflict of ideologies as the explosive issue of our times.

And he was not just talking about foreign countries, he was speaking about all societies.

Now, all of these men are true civil libertarians, not racists, not xenophobes, but they do care about unity and stability in their beloved country.

I fear that providing bilingual ballots to certain groups in this country will

not encourage the learning of English. Rather, it will reduce the pressure to learn English on those who are offered ballots in another language. Bilingual ballots give the impression that our Government does not consider English knowledge to be especially important. We need to bring people into the mainstream of our society, and treating them specially, differently or separately, does not further that goal.

Recent events in this country have focused on differences between ethnic groups. We hear of news reports around the world reporting about an America which is fragmented, which is not united, which consists of groups of others fighting among themselves, beating each other up; stories about black persons being brutally beaten by white cops, Korean immigrants trying to make it by working hard defending their stores with guns against mobs who would burn them out because of their race and their color. That is how others in the world see us today.

It just seems to me that we in Congress should be doing whatever we can to help people to become and feel that they are part of our society, part of our system, one nation, our Nation, indivisible and under God. That is not corny stuff. That is how we formed this country. It is the only nation on earth founded with the belief in God or founded on the belief in God. People came here for that purpose, significantly and primarily so.

So what is the one thread that holds us all together, united? I believe that it has to be the English language, and the rest of our public culture.

I believe that anything we do to discourage the use of English, particularly when participating in our system of government and voting for people who represent it, is wrong. To be able to communicate and understand one another is a key to an integrated society that we all aspire to in this country. But we will not have an integrated society unless we can all communicate in a common language.

A few weeks ago—and you will hear this—on CBS radio there was a news report discussing the unrest in Mount Pleasant a year or so ago, and the complaint by some Hispanic leaders that not much had changed. They did not feel their promises had been kept and the promises of the majority in the District had not been met.

The Hispanic leader who was speaking about what needed to be done by the D.C. government was giving his address in Spanish, while another person was providing a simultaneous translation in English. We all know what simultaneous translations are. It is kind of like taking a deep breath and hope you got some of it. Whether it is the Russian or Turkic or whatever it may be, simultaneous translations leave so much unsaid.

So, my thought was, as I thought of that, that the District government should do more to include the Hispanic population, and that the Hispanic leaders should communicate their concerns much more effectively if they could do it in our common language, which is English.

My point, Mr. President, is that the building of any consensus, the doing of things we do here, parties working together, the reason that has ruptured in legislatures all over the world is that sometimes they do not speak a common language and they do not care to speak a common language and they do not intend to.

My point is that the building of consensus, the implementation of any solution that we come to in government, can best be done in a single, common language. And for the essence of American politics, the genius, if you will, of American politics is compromise. Compromise is an art that many, no, I would say, that most other countries have totally failed to achieve.

But to compromise, you must first understand clearly the other's position. And to understand the other's position, you must be able to listen to the other person. And how can we listen or learn or hear or explain to each other if we do not speak the same language? It cannot be done.

Now, I know that my friend from Illinois, a fine friend of over 20 years—we met long before we came to this place; we were legislators together in our respective States, known to me during those years—who authored the book "The Tongue-Tied American," believes that we should all learn other languages. He puts great stake in that. I agree.

And I am ashamed that I and so many of us right here are monolingual. Learning another language is so important. I hope that those that come here knowing another language will keep that language and teach it to their children.

But for a successful, truly successful, life to be led in America, whatever that term means—and it does not mean money; it means satisfaction and the blessings of America—but for a successful life to be had in America, they must know and use English.

All the great leaders of the Hispanic-American community know that. And yet they also know that they can build their constituencies if they can just take anybody into their system, under their wing, and they know in their heart what they are doing to their own system.

We here in the Senate have acknowledged the importance of knowing English on many occasions. And let me refresh your memory on this one. I recall the very first successful amendment to my original immigration bill in 1982 was a provision—it was a sense-of-the-Senate provision—to adopt English as the official language of the United States. It passed big. The vote was 78 to 21. Go look at the rollcall vote on that one. An array of the most extraordinary liberals, progressives, conservatives—whatever you want to define in a category, and it passed 78 to 21.

Of course Senator Hayakawa was here. And he was the one speaking very vigorously on it. I think it came up again. There was a vote of 75 to 25. There were other times when we dealt with it.

Sam Hayakawa was absolutely eloquent as he described how he succeeded in America, and he succeeded because of his knowledge of English and nothing more. Except he became, then, a semanticist and taught in the colleges of America.

I opposed that amendment when it came up. Go look at the people who opposed it, too. But I opposed it only because I believe it has no place on an immigration bill dealing with illegal immigration. Nonetheless, it passed this body by a 4-to-1 margin and, as I say, our departed friend Sam Hayakawa, rest his soul, led the debate on that.

I also then remember the Jim Wright amendment to the Simpson-Mazzoli immigration bill of 1986. That amendment, sponsored by the then House majority leader, became part of the House bill and was accepted by the Senate conferees in conference. It required any illegal immigrant receiving legalization to learn English before acquiring permanent status.

Speaker Wright, as he later became, knew exactly what was required to make it in America: English. He was from Texas. English proficiency is not only the key to success in America, but increasingly the key to success around the world and is the key to jobs.

So when I see any Government program that does not encourage English proficiency—and this is surely one—I wonder what effect that will have on our common bond, the common thread that binds us all together. I worry that what we are doing is simply for effect, for temporary, feel-good effect, which would surely backfire upon us in the future. So I look at this bill and I ask if it will have the effect of making everyone from every group feel included, represented, involved, given a stake, being a player in our society?

Let us look at the figures. I have said this before. Everyone is entitled to their own opinion but no one is entitled to their own facts.

I have looked at them. I am not convinced at all that bilingual ballots do anything to help unity, cohesion, and inclusion. I wonder if bilingual ballots might actually encourage feelings among those people of feeling very separate, and very apart, and very different.

I think we could all agree that nothing is more important to full participation in our system of government than the act of voting, the sacred act. Are

bilingual ballots our way of telling people that they can fully participate in our society without knowing English, or are we telling them they are separate and different? Or is it just big nanny or a paternalistic Federal Government saying to someone that what we are doing is best for you, or we think it is best for you?

I am concerned that Congress does not have the evidence to support continuing bilingual ballots. I feel that by going ahead despite having no knowledge of its effects, we could be doing even more damage by expanding bilingual ballots to additional jurisdictions, and that is what this bill does.

But, let me say right here and right now and maybe this debate can bring us to that point, if someone can show me that bilingual ballots are truly needed, effective, and increase voter participation, and if they are truly useful and helpful in bringing people into our public culture, making them feel part of rather than separate from, I will support this bill. And I urge my colleagues to do the same.

But I am not ready to do that on faith; or on the vaporous and heady fumes of feel-good symbolism. I believe that a Federal requirement that State or local jurisdictions print official documents in languages other than English is generally a very bad idea. And there must be solid evidence that will produce a substantial good, before we continue that activity.

Let me go over some of the questions I have about bilingual ballots. Let us start with the hard data. This data all comes from the U.S. Department of Commerce, Bureau of the Census.

If bilingual ballots are intended to increase minority group participation in the voting process, I am here to tell you that they surely have failed. First let us look at the Hispanic voter registration numbers. I have heard it said that bilingual voting assistance doubles or triples voter participation. That is not true. After 15 years of bilingual ballots, the registration among Hispanic citizens moved up only 4 percent, to just over 50 percent. When it comes to actual voting the numbers are worse, 34.3 percent of Hispanic citizens of voting age actually voted in 1978. In 1990 that number had declined to 33 percent.

So, since the institution of bilingual ballots, the rate of voting participation for Hispanic citizens of voting age has declined. Please hear that. I have a chart to reflect that and would ask Mr. Day if he would retrieve that and I will present it to you without the giant rack which goes with it, which looks like a roller coaster apparatae.

So, hear that. Since the institution of bilingual ballots the rate of voting participation for Hispanic citizens of voting age has declined. Some will say—so what? All voting percentages have declined.

Let us look at the relative decline in voting. Are white voting rates declining faster than minority language voting rates? No. They are not. Minority language voting rates declined faster over the last 15 years.

So, do bilingual language, bilingual ballots, bring white and minority language participation rates closer together? No. That is certainly not the way I see it.

There is your description, percent of citizens reporting voting in congressional election years—by race. Rather an interesting thing we do now in our electoral process. It seems to be big in both parties but let us look at it because here it is.

In 1978 there was a difference here between white voter turnout and Hispanic voter turnout of 14.5 percent. Here to here.

And in 1990, this difference between the white voter turnout and the Hispanic voter turnout is 15.2 percent.

So there you are; 34 percent here dropped to 8 percent there. That is extraordinary. And that is the facts. That is what we are talking about here. I know there will be other, I am sure, facts. But I do not know anything more graphic than that.

So, do they bring these participation rates together, closer? No. That is not the way it is. That is not so. And these are from the Department of Commerce and Bureau of the Census.

Then, between 1978 and 1990, the gap as I say between the percentage of Hispanic citizens voting and the percentage of white citizens increased from 14.5 to 15.2, and that is not a majority/minority distinction either; or a problem with the Voting Rights Act in general. Blacks—and let us get this out of the way so we can move on to the debate—blacks have greatly benefited from the Voting Rights Act. And that is marvelous. That is what we were about.

In Mississippi, for instance, only 6.7 percent of the black voting age population was registered before 1965, the year the Voting Rights Act was passed. Only 7 years later, 63.2 percent of such persons were registered to vote.

Clearly, when the Voting Rights Act is the legislative solution to a very real problem, it can be very effective, was and is, and I have supported that fully.

Please hear me, I do not blame bilingual ballots for the decline in the voting participation rates by Hispanic citizens. I know the census figures are not perfect. I believe there are probably more Hispanic voters today than there were 15 years ago, and there certainly should be, because I have been involved in that, as our immigration laws over the last 15 years have been particularly generous to regard Hispanic immigration. And I have been an engine in that change.

But these census figures do raise some very valid questions about whether bilingual ballots are doing anything useful to increase the participation of language minorities in the electoral process. I do not doubt that bilingual ballots are used, but that does not mean that they are needed. I hope we can make that distinction, or that it means that they are effective in increasing voter participation.

I would believe it to be natural for a person who speaks English at work and Spanish at home to choose the Spanish language ballot if it were available, even though that voter could fully understand the ballot or other materials in English. The fact that bilingual ballots are used does not mean that they are needed or that they increase voter participation.

So, has section 203 of the Voting Rights Act been a factor? I see no statistics at all to reflect that. If the all-English ballot is the problem, then 15 years of bilingual ballots has not been the solution.

I am told that some proponents of this bill are working to come up with additional information that will show that bilingual ballots are effective. They say, do not rely on the national data; look to the individual jurisdictions where these laws apply.

I would like to look, but I have not seen that information yet. If it exists, I hope someone will show it to me with dispatch. This is the place for that. If it does not exist, I would like to get it. Or perhaps help find it. In fact, if additional information is forthcoming, I would hope then that we would postpone action on this bill to see what we may be able to learn from the new data and, remember, if this bill did not pass just because this is the date of expiration, not a single person would be denied their right to vote. Not one.

And I urge commentary with regard to that. No one would be deprived of their right to vote if this did not pass. It will pass. They would only be denied their right to have a bilingual ballot, but not the right to vote, so that is not a correct statement anyway. So I await that data.

I will have an amendment to reauthorize bilingual ballots for 5 years and give us an opportunity to get a detailed report of the necessity and effectiveness of bilingual ballots. At the end of 5 years, we can review all the data which we do not have at this time and then make an informed decision about the continued use of bilingual ballots. That is a sincerely offered proposal. I am more than uncomfortable dealing with this bill otherwise.

I do not think we can find any justification to reauthorize bilingual ballots until the year 2007—2007. How can we impose something that has hardly worked, or maybe it does not work at all, on the country until the year 2007? That is regrettable logic. How can we explain it to people if we do not have any evidence to support it?

I believe that the American public is largely opposed to bilingual ballots. Every time it is on the ballot, they vote against it with big numbers, and we are not talking about racism. Let us not slip back over into that where we always go when the facts fade. The American public is largely opposed to bilingual ballots. They are even opposed to further immigration. They are even opposed to further illegal immigration. They always have been, and they are even opposed to legal immigration. That is why I have been proud to wend my way through that and try to bring more people to the United States, and we have been successful, but it is not the most popular thing.

When Congress last addressed bilingual ballots in 1982, there had been virtually no polling or voting by the American public on the issue of English as our Nation's official language. Since 1982, the people have expressed themselves and their position on this issue time and again, and as their representatives, we must try to make certain that their desires are at least considered instead of just laughed off.

I think that the position of the general public is pretty clear. San Francisco, 1983, 64 percent of voters in a referendum in that remarkable, multicultural city voted against bilingual ballots and asked Congress to repeal the law mandating it.

California, 1984, 72 percent of the voters in a statewide initiative voted against bilingual ballots and asked Congress to repeal the law mandating it. The Governor duly petitioned the Congress, and we duly ignored it and the wishes of the people of California.

California, 1986, 63 percent of the voters approved a constitutional amendment making English the State's official language. One of the biggest issues in that election was bilingual ballots.

State after State have been passing laws making English their official language. It has been my personal experience that support for the use of English is particularly pronounced among the recent immigrant groups. I do not believe it is the newcomers themselves who expect or want the Government to do this or to coddle them. I really believe that. And I have talked with them.

We in the Congress have been criticized up and down the pike for allegedly ignoring the wishes and desires of the American public. I do not believe that. But, nevertheless, they say we are out of touch or we do not get it—a certain arrogance and real elitism there. A nice phrase from the groups who really do not get it themselves.

It seems to me that the American public, including our various and diverse ethnic groups, have made their position quite clear on the language issue, and it is as if we ignore them again as we consider bilingual ballots this year, we will be giving them one more piece of evidence that we are indeed out of touch, we really do not get it.

Let me speak for just a moment on the proposed expansion of the bilingual ballot which is also contemplated by this legislation. This is not just a renewal or an extension, this is an expansion.

The bill proposes new coverage for jurisdictions for more than 10,000 of the citizens of voting age who are members of a single language minority and have limited English language proficiency. This apparently is intended to cover language minority citizens who, even though they might number 10,000 or more in a single county, still do not make up 5 percent of the voting age population. Counties like Los Angeles, Cook, and some in New York would probably be among those newly covered by these provisions. Indeed, they would.

I believe the sponsors' estimate this measure would extend bilingual ballots to an estimated 24 counties.

What bothers me is that I have not seen the justification for this expansion of coverage for these areas.

Good questions would be:

Are they hotbeds of discrimination in voting? I would like to know that.

Are they in for use for English-only election material? I would like to know that.

Are minority language voters in these areas clamoring for bilingual ballots? I would like to know that. I do not think so, though. The Justice Department has testified that "it has not received significant numbers of complaints" for these jurisdictions.

Is there a compelling reason to expand bilingual ballots into these large counties?

The reasoning behind this adding of 10,000 persons, a quota, makes sense only if one blindly assumes that bilingual ballots are inherently good. But also note that the expansion of bilingual ballots to every county, which includes—now get this, because we have Indian reservations in my State. Those that do not are not really understanding this one. I also note that this is going to go to every county which includes any part of an Indian reservation, and that would require bilingual ballots in every single one of those counties, even if the Native Americans all lived in one part of the reservation in one county. That is bizarre.

Furthermore, languages of the Indian Native American people which have never been set down in writing. They cannot be. They have passed into history, or maybe never started with a written language.

But that is the paternalism we are going to take care of. What is the justification for the type of expansion of the program?

When the Justice Department does not receive many complaints, and that is their testimony, when the proponents cannot really tell us why we should expand this coverage except to say that it is American and it is patriotic and it is right—and all those things are great, but what is the reason—then my question is why are we then doing this other than the fact you will not find many people voting against it? But there are a lot of them who will come up to you in the hall and say, "AL, you are really on the right track with that one, but I will not be anywhere around when the vote is called up yonder on that one." I understand that. That is how I get in a lot of trouble around here.

Why are they then doing this? As we consider this legislation, I hope every one of us will consider that question: Why are we then doing this? If there is a hard reason or a real need, I would very much like to hear what it is.

No election will be affected this year. Everyone will have the right to vote. They can go to vote. They can pick up the ballot. The only "right" that will be missing is the bilingual ballot. So I would like to hear what that is. I presume that the new trigger was written into the bill for a reason. I cannot believe we believe that we are expanding coverage just to cover more jurisdictions. That is what a lawyer might call "boot strapping."

A third question to consider is who uses bilingual ballots? I know there is a position of my colleagues in support of this bill which says that some of our senior citizens are incapable of learning English so they need special assistance. After all, these folks are given an exception under the naturalization requirement that they know English before becoming citizens. They have already received that exception, and that is good. Or perhaps they are used by persons like Cuban Adjustment Act citizens who become citizens only 3 years after coming here—we never corrected that one yet—and they do not have time to master English.

But, my colleagues, they really do have time. They have had time to do very well in this country, and they probably have learned English if they are doing well. If they are not doing well, they probably have not learned English, and they learn in an abused and exploited condition in the bowels of New York, in the ghettos of larger cities. That is where they are, being abused because they do not know English.

So they really do have time to learn, and we have English as a second language. I am ready to support that. I am ready to put up more money for that anywhere in the United States. I think it is very important.

But I am certain that bilingual ballots do serve some people in these categories. I believe that. And we need to do what we can to help these folks in the electoral process. But what about

this? And hear this carefully. I am going to conclude in a very few minutes. What about the report—now get this one—of the GAO that 77 percent of the users of Spanish language ballots are native-born Americans? Try that one on. GAO reports 77 percent of the users of Spanish language ballots are native-born Americans, not the people we are trying to bring in to help over the hump, to give that little boost; indeed not.

What about our naturalization laws that require a knowledge of English in order to become citizens? I do not think bilingual ballots should be used to fill the holes of a faulty naturalization process or a faulty educational process where people are not learning English who were born in the United States of America. That is not the purpose of the bilingual ballot. That is the purpose of an educational system that apparently is not working.

Bilingual ballots are not a solution to our Nation's educational problem. I fear that they are, indeed, a divisive, misleading, expensive, and disruptive Government program that as far as I can determine—and I have been looking around—has produced no real results after 15 years.

There is no real reason given to us to expand and extend this program. It is an unnecessary intrusion of the Federal Government into the processes of State and local governments. And I want to quote Linda Chavez. Mr. President, do not think she does not get a rich rash of stuff from some of the groups, because she is very successful, very outspoken, former staff director of the U.S. Commission on Civil Rights. She recently wrote this, and I think it has a tremendous ring of truth from my knowledge in these past years in dealing with the groups.

Today, few Hispanic organizations on their own promote English or civic classes for Latin immigrants. Instead of imbuing immigrants with a sense of the importance of acquiring and adopting the common English language, Hispanic leaders place greater emphasis on retaining Spanish and thus encourage Hispanics to remain separate from the culture in which they reside.

I share Ms. Chavez' view that the efforts of the groups to extend bilingual ballots could better be directed at promoting English classes for those who need to improve their English to naturalize or to vote or simply do as well as is possible to do in this country. That is what those groups ought to be doing, but they do not do it.

Ask them the reasons for that. I have my own view and I have shared it with many of them in their organizations.

It is just my hunch they hope that then those people realize somehow those people who are in the groups have been their salvation, when their salvation will be the English language.

What about the possibility of translation errors? That is a real possibility based on past experience. Some of these California propositions and even Wyoming constitutional amendments are difficult enough to read in English, much less figure them out well enough to translate into another language. Translations are not exact, as we all know. In Canada, where every law in the books is printed in both English and French—get this—lawyers spend hours pouring over each version to determine which one would best suit their purpose when bringing an action based on a statute. Sometimes they choose the French version, sometimes they pick the English version, not because they favor one language or another, but because the nuances of one translation will better assist them in their cause and in their case.

As far as the ballot initiatives are concerned, the solution is to improve the procedures a State or locality uses to put a measure on the ballot, not to have bilingual ballots.

In fact, I believe that most States provide a separate ballot summary and a title for complex initiatives. You will find that.

I fully support a translated sample ballot if someone needs it. But why does the Government have to require it? Why cannot community groups such as the local chapters of MALDF, Mexican-American Legal Defense Fund, or LULAT, League of United Latin American Citizens, voluntarily provide sample ballots translated into the language of the local community? It would be a good exercise and good civics for their lawyers to explain the ramifications of a complex ballot measure to the folks right there in their own communities. And if the Government is going to continue to require translation ballots, I think we would do a great service by requiring notice on all translated materials, and that notice should acknowledge the possibility of translation errors, and inform the user that the official version of the ballot is the English version.

One thing we do not need are disputes arising from voters casting their ballots in the foreign language, while voters using the English versions cast their votes for something different. We do not need that. That happens in other countries, and those countries are in civil and social turmoil.

People who do not feel comfortable with an English language ballot have all sorts of options open to them right now, if this thing was never on the books. These options are available for everyone, every voting citizen, including people who are native-born Americans who are illiterate in the English language.

One option is the absentee ballot; do that, which a voter can fill out at his or her leisure at the kitchen table. You can do that right now, long before this ever came into the system.

If the voter does not understand something, he or she will have time to ask. Look it up, or read more about it in the newspaper, if they can. And the newspaper can be in whatever language they want; whatever one the voter chooses.

Another option that many people use is to bring a friend or a relative to the voting booth to provide assistance. Some people might claim this is an invasion of privacy and of their right to a secret vote. But it is an option that many people can and do use.

One can also take notes into the ballot box, and marked-up sample ballots with them into the voting booth to cast the ballot. It is not like some closed-book test, where you walk in with no notes, try to understand the question, and through some higher power—one I sometimes never found in some classes—try to divine the right answer.

But it is a culmination of a process which includes watching television, reading the newspaper, and talking with friends and relatives, neighbors, coworkers and fellow union people, or fellow farmers, about the pros and the cons of the ballot choice. That is what it is about. That is participatory democracy, not just machine stuff, automation—walk in; crank; out the door.

If one wants to write down the choices before entering the voting booth, and take the votes with him or her, in any language chosen, he or she is free to do so. That is the law now. So there are many alternatives, and most of the immigrant groups may have to use these alternatives. They will.

Yet, this legislation provides bilingual ballots for a select group—Hispanic Americans, Asian Americans, and Native Americans. There is not one single thing here for the voter who speaks Russian, or Polish, or Italian, or whatever language. And—get this—more Russians received immigrant visas last year than any other national group. I am sure that will be a very quick amendment. We will have that in there very swiftly, I would think, when we brought in over 50,000, or some such figure, in these last months of people who speak Russian. They are not mentioned here.

There is nothing here for the Ethiopian or the Iranian refugee, but these folks will do quite fine, thank you. They will learn English; they will vote; and they will succeed here without bilingual ballots. That has been our tradition. That is our history.

I fear this legislation will only serve to reinforce the non-English speaker's native language, and relieve the pressure—that is a good word to use, the pressure—on that individual to learn English. And that we must never do. We must keep that pressure on our citizens to learn English always, for their benefit, for the betterment of their own lives, for their totally selfish benefit, for their jobs, and for our country's benefit.

Mr. President, the Government-mandated program also most surely does create additional expense for local jurisdictions, and I firmly believe that if we are going to issue a Federal mandate to these local jurisdictions and if we feel this is so important that we must require them to provide bilingual ballots, then we must be ready to put our money where our mouths are and provide the necessary funding for that.

I will offer an amendment which will provide for Federal funding of any federally mandated bilingual voter assistance.

I would like to speak a great deal more about such things as the unfairness of providing bilingual ballots to some groups and not to others; the serious insult we pay to immigrants who have taken the time and have made the effort to learn English; and other problems I have with this legislation. But I am not going to do that. It is not my intent to filibuster this legislation, and never was.

So I do want once again to ask my colleagues this question: What are bilingual ballots for? Then I want to ask another question: Does this legislation, in its parts or in its entirety, accomplish that purpose?

I know all of us still have in mind the Los Angeles riots, the problems troubling our Nation that that violence brought home to us.

I believe we must consider whether this Government mandate or these bilingual ballots contribute to a common, central experience to all Americans, or whether it will send a message that we are composed of separate groups. Do we get along as best we can, or does the Government once in a while step in with something like bilingual ballots that are well meant, but indeed may simply contribute to the problem we set out to address?

I close with something else that Linda Chavez recently wrote, and she received unshirted hell from most of the groups, as we refer to them.

She said this:

> Assimilation has become a dirty word in American politics, invoking images of people, cultures, traditions, forged into a colorless alloy, in an indifferent melting pot. Where once the goal of new arrivals was to gain admittance to the American mainstream as rapidly as possible, now ethnic leaders advocate groups remain separate; that native cultures and languages be preserved intact; and that every effort be made by society to accommodate ethnic "differences."

This brash and strong-willed woman, Linda Chavez, goes on to point out in the article that while it is true in some parts of the country that Hispanics are less likely to vote than either whites or blacks, the problem is not language, but the fact that then-Senator Barry Goldwater once put in an earlier hearing on the bilingual ballot issue that:

> Forty percent of all Spanish-origin persons who were not registered in 1974 reported they were not citizens.

I hope that big government will not once again, in this year, take a well-meaning step that has an adverse—if unintentional—consequence. This is one of those issues which is politically correct here inside the Beltway. You bet. When we get one of these types of issues, we sometimes do strange things.

During the debate on the immigration bill when Senator KENNEDY and I sponsored, for instance, while this body warmly embraced my proposal that we give preference to an immigrant who had a Ph.D., it voted down my proposal that we give preference to an immigrant who spoke English, despite the fact that the immigrant was a doctor, and is likely to be more wealthy, more privileged, and elite than the one with the high school diploma who has learned English.

A vote against a preference for knowing English was the PC vote—politically correct—in the finest form. Now this body that was opposed to giving immigration preference to immigrants speaking English will have an opportunity to vote on whether the Federal Government should mandate special help for immigrants and others who cannot read or speak English very well. That will be the amendment of Senator BROWN.

The census form says that if you speak English very well you do not do the bilingual ballot. But if you speak it only well, you do. That needs a new definition, and Senator BROWN will discuss that.

So I see it simply as a question of what is in the national interest. I believe unity and commonality and inclusion are in the national interest. I believe a common language, through which all Americans can communicate with each other, is in the national interest. And I believe that unrelenting pressure to learn English on all who join our society is certainly in the national interest.

As for political correctness, a politically correct vote in our own districts and States will be against a Government-mandated program which has not been shown to be effective, and which may indeed be unintentionally very much against the national interest.

I thank my colleagues for their patience. I think this is well within the discussion of time, and without a time agreement.

I appreciate the indulgence of my colleagues.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, first of all, I want to express my appreciation to the majority leader for bringing this matter to the Senate in a timely way. As has been pointed out earlier in the debate, this legislation expires this evening. We know that the Senate schedule will put the Senate out next week, and we will be facing a number of local elections this fall. This legislation is extremely important in the counties across this country that have been attempting to ensure that the right to vote is going to be available to all Americans; it is important that they understand what the intent of the Senate of the United States is on this issue. The legislation was overwhelmingly accepted and endorsed in the House of Representatives, and now this evening we will have a chance to address this issue ourselves.

Mr. President, I also want to express my appreciation to the floor manager of this legislation, Senator SIMON, who has provided real leadership on this issue and many other issues in the Judiciary Committee. He has always been a constructive force to expand the right to vote and to permit all eligible individuals to participate in our election system. I congratulate him on his leadership in this area.

Also, although I differ with my friend from Wyoming, I want to express my appreciation to him for the matters which he has brought to the floor this evening. Many of these matters we did discuss and consider in the Senate Judiciary Committee, and we will have an opportunity to debate them further this evening.

I would like to make some general comments and not take a great deal of the Senate's time. Before I do, I want to pay tribute to our good friend and colleague from Utah. This legislation is Simon-Hatch legislation. The principal cosponsor is Senator HATCH, from Utah. It is only because of the personal sadness of the loss of his father in the early morning hours of this day that has necessitated his absence from this debate and prevented him from adding his own strong sense of justice in support of this legislation.

We are indebted for his leadership and strong support of this legislation. I will include in the RECORD the letter that he wrote. I will not read Senator HATCH's statement, but I think his strong support for this legislation is illustrated in a letter that he sent to his colleagues in the Senate. I'll just read:

> DEAR COLLEAGUE: We are writing to inform you of the Administration's support for the reauthorization and strengthening of the federal bilingual voting assistance mandate contained in S. 2236, the Voting Rights Language Assistance Act of 1992.
>
> Two of the important provisions of S. 2236 designed to support greater access to the ballot box by Hispanics, Asian-Americans, and Native Americans include:
>
> reauthorization of the current bilingual voting assistance mandate for 15 years.

As Senator HATCH pointed out, and as others have pointed out, the reason for the extension of 15 years is so that this law will terminate along with the rest of the Voting Rights Act, which we have supported and passed, so that they will all terminate at the same time, and we will have an opportunity

to examine all of those particular measures.

He goes on to say:

* * * inclusion of a numerical "benchmark" in the formula used to determine coverage. The benchmark would close gaps in coverage which have left large Hispanic and Asian-American communities without bilingual voting assistance.

Consistent with its strong commitment to the inclusion of and expansion of opportunity for minorities in the American political process, the Administration supports both of these important provisions.

We urge you to join us in support of the Administration by casting a vote for democracy and supporting S. 2236.

I think this captures the spirit of what this is all about—democracy, participation in the electoral system. The letter was signed by Senators HATCH, MCCAIN, DURENBERGER, KASSEBAUM, CHAFEE, SPECTER, D'AMATO, MURKOWSKI, and PACKWOOD.

So, Mr. President, this is the essence of the real issue—whether we are going to continue the long march toward democratic institutions and democratic rights.

The right to vote is the cornerstone of our democracy. Without it, all other rights are in danger. We are proud of our democracy. Our history has been marked by a continuing struggle to extend the franchise to all Americans.

In the past two centuries, a number of key amendments to the Constitution have enlarged the right vote:

The 15th amendment in 1870 prohibited voting discrimination because of race.

The 16th amendment in 1913 provided for direct popular election of Senators.

The 19th amendment in 1920 prohibited voting discrimination because of sex.

The 23d amendment in 1961 granted citizens of the District of Columbia the right to vote.

The 24th amendment in 1964 prohibited the use of poll taxes to restrict the right to vote.

And the 26th amendment in 1971 granted the right to vote to citizens eighteen years of age or older.

The words of the Constitution are not self-enforcing. In many cases, it has been left to Congress to enact statutes to carry out the intent of the Constitution. In 1965, Congress took a giant step in that direction, when it passed the Voting Rights Act to prohibit practices that limit the right to vote on account of race or color.

One of the most serious legacies of past discrimination is the large number of American citizens of Hispanic, Asian, and Native American heritage who have been deprived of fair educational opportunities, and as a result, are not fully proficient in English.

In 1975, Congress recognized that if the right to vote is to be meaningful, these Americans must be given the opportunity to obtain language assistance such as bilingual registration and ballot materials. To achieve that goal, Congress added section 203 to the Voting Rights Act to require jurisdictions with significant language minorities to give eligible voters this kind of language assistance.

Section 203 has made an enormous difference in giving citizens access to the bilingual information they need to register and to vote. A 1986 GAO study reported that about 1 in 4 Latinos who voted in the 1984 general election in Texas used bilingual ballots.

In 1990, 25 percent of Hispanic voters in Texas and 18 percent of Hispanic voters in California used bilingual election services.

The importance of language assistance is also confirmed by comparing the registration rates among Hispanic voters in covered jurisdictions with those in noncovered jurisdictions. In New Mexico, where bilingual election materials have been required since statehood, the Hispanic voter registration rate is 85 percent of the rate for Anglo voters; the Hispanic registration rate in Texas, which is covered by the act, is 65 percent of the Anglo rate.

But in jurisdictions with significant Hispanic language minorities that are not covered by the act, registration rates are less than half of the Anglo registration rate.

I have listened to the debate saying, what about the falloff of the registration by Hispanics? Of course, it has fallen off; 670,000 will be covered by this act that are not now covered by this act. They are denied bilingual assistance. Well of course, participation is going to fall off. That is self-evident. I was kind of surprised that some people would spend so much time trying to make something big of that fact. It is self-evident. They do not have that kind of support. They do not have that kind of assistance. Then their registration rate is not going to be the same in terms of comparison with others, and it will continually decline.

Other studies confirm the positive impact that the legislation has had on voting by Asian and native American citizens. The point is raised here, why these groups? Why these groups? You know, it was not long ago, 1965, when we had an Asian Pacific Triangle to discriminate against Asians, as a part of American law. Have we forgotten the internment of Japanese-Americans in World War II? All you have to do is read the various reports on Indian education. I will take a moment or two and include this tonight. The Bureau of Indian Affairs have been educating Native Americans, and it has been one of the most disgraceful actions that has ever been undertaken by any agency in this country.

I want to refer my colleagues to the remarks of Representative PASTOR in the House debate on this legislation:

Mr. PASTOR. Madam Chairman, today, a few minutes ago, we heard that if a citizen of this country does not know English, that he or she should not be able to vote, the basic right of any citizen of this country.

Well, let me talk about the first citizens in this country, a people that we fought, that we conquered, the first citizens who today have to go to BIA schools, Government-run schools where they do not learn English properly.

They are on reservations, Madam Chairman. Our Government has put them there. But yet they are citizens of this country.

They would like to participate in this country, to make decisions for their people, and yet we deny them participation because this Government does not teach them English properly.

The native Americans of this country, the first citizens of this country, need to have a voice in their Government. If we are going to deny their vote because we do not teach them English properly, then shame on this country, shame on our society. Why should we exclude the native Americans because we try to treat them as second-class citizens? I ask my colleagues, there are many citizens, the first citizens, of this country who have the right to vote; they only ask the assistance to be well informed and to participate in this Government like any other citizen should.

You have the large numbers of young native Americans that drop out of school, had the kind of social problems that exist, and I say that as a former chairman of the Indian Education Committee. That is why we have identified native Americans.

And the record, in terms of discrimination against Hispanics, has been equally poor, particularly in the area of education.

So those who oppose this legislation suggest that giving bilingual voting assistance removes a significant incentive for American citizens to learn English. That is just plain wrong.

I read from the statement by Congressman JOSE SERRANO, the Congressman from the Bronx, in supporting extending the act:

The Voting Rights Act and section 293, in particular, are largely responsible for the opportunity I have been given to serve in the Congress of this, the greatest, the most free and Democratic nation in the world.

My testimony to you comes from direct, deeply personal experience.

Section 203 is not a luxury. It is the essence of the franchise for a large and growing number of voting American citizens, who are unable to effectively participate in an election because of the difficulty of language, are denied the franchise just as surely as they would be if literacy tests were administered or poll taxes.

Just the same. Just the same. The same effect.

Bilingual elections do not promote cultural separatism but instead help to integrate the non-English-speaking citizens of our system of democracy.

And I thought he pointed out in the course of the debate—and I will just quote him briefly.

I was born an American citizen on the island. I was born on an island that speaks Spanish for the most part. Yet during the Persian Gulf war, no one said we will take 16,000 troops out of Puerto Rico only because they do not speak English proficiently.

Some, unfortunately, did not return, who never spoke a word of English on the battlefield because they only spoke Spanish.

And Congressman ORTIZ also pointed out:

Providing bilingual voting assistance is a way of encouraging citizens to participate in the most American of institutions—the political process.

By giving language minorities a reason to believe in American Government and by giving them a way to become invested in the decisions our Government makes, bilingual voting assistance can cultivate a sense of patriotism and civic duty that is sorely needed in today's anti-Government climate.

Time after time, Hispanics have shown that when they are given the chance to contribute to their country, they deliver.

Hispanic-Americans have earned 38 Congressional Medals of Honor in serving their Nation.

Those who oppose this legislation suggest that giving bilingual voting assistance removes a significant incentive for American citizens to learn English. That is just plain wrong.

Many American citizens born in this country are less than fully fluent in English, because another language was spoken in their home. Our naturalization laws permit otherwise qualified older persons to become American citizens without becoming fully proficient in English. These citizens have the right to vote; the question is whether they will cast an informed vote. If our democracy is to function, every voter must understand the choices to be made in the voting booth. Language assistance for those who need it is thus imperative for our democracy.

This year's voting rights amendments extended section 203 and make useful changes in its provisions. The bill modifies the threshold for coverage, so that jurisdictions are covered if members of a single language minority total either 10,000 citizens of voting age, or 5 percent of the voting age population, whichever is lower. Existing law placed the threshold at 5 percent of the jurisdiction's population.

That change will assure that communities with significant language minorities will be required to provide language assistance. The bill will cover Los Angeles, Cook County, Queens County, Philadelphia, and Essex County, NJ, all of which have at least 10,000 Latino voters with limited English proficiency; it will also extend coverage to Boston, MA, which now provides bilingual assistance although it is not required to do so. None of these jurisdictions is covered under the current threshold; each would be covered by the legislation before us. The change will permit assistance to be given to an estimated 860,000 minority language voters in 34 counties across the country.

The bill also clarifies the existing law to ensure that the act applies to reservations on which there are significant numbers of native Americans who are not fluent in English.

I will just mention in the course of the House debate again as the discussion was relating to the coverage of the—I will come back to that aspect in terms of the coverage of the Indians. Here it is. And this again is Mr. Pastor, who succeeded Mo Udall.

H.R. 4312 has special significance for native Americans because it improves section 203's coverage of native Americans living on Indian reservations who have limited English language skills. The current standard in section 203 excludes many reservations with significant populations of limited English proficient native Americans. Elsewhere, only parts of reservations are covered. This occurs because the current coverage standard does not consider the unique history and demography of native Americans. Native Americans living on reservations and other Indian lands comprise less than one-third of 1 percent of the total United States population. These relatively small populations are split by State and county lines, which were often drawn without regard for reservation boundaries when States entered the Union.

Mr. President, this law preserves the provision in existing law that directs the Census Bureau to determine membership in a language minority by counting the number of voting age citizens "who do not speak or understand English adequately enough to participate in the electoral process."

A very detailed study was done on that by the Department of Education along with the Census, and the record is, I think, strong in support of those particular provisions. I understand we may face an amendment on that issue.

This provision assures that language assistance will be required only where it is needed.

In this election year, voting rights are too fundamental to become bogged down in partisan politics.

I am, therefore, especially pleased that the Department of Justice and the Bush administration support the reauthorization of this important civil rights legislation.

Section 203 expires today. Jurisdictions that are holding primaries in September need to know their responsibilities now. The House has already acted; I urge the Senate to pass this bill today and send it to the President, so that these fundamental provisions of the Voting Rights Act can continue without interruption.

PRIVILEGE OF THE FLOOR

Mr. President, I ask unanimous consent that Linda Blauhut be granted privileges of the floor on the bilingual voting rights bill.

The PRESIDING OFFICER (Mr. BREAUX). Without objection, it is so ordered.

• Mr. HATCH. Mr. President, I want to pay tribute to my friend and colleague from Illinois, Senator SIMON, for his leadership on this vital issue. This is a very important matter and the Senator from Illinois deserves our thanks for moving this legislation along. I also want to thank his staff for their fine efforts and cooperation: John Trasvina, Jayne Jerkins, and Susan Kaplan.

I am pleased to be the lead cosponsor of this measure. It has strong, bipartisan support. The entire subcommittee on the Constitution has cosponsored the bill. It passed the full committee on a 12–2 vote.

The right to vote is one of the most fundamental of human rights. Unless Government assures access to the ballot box, citizenship is just an empty promise. Section 203 of the Voting Rights Act, containing bilingual election requirements, is an integral part of our Government's assurance that Americans do have such access.

Section 203 requires, in pertinent part, that States and political subdivisions provide registration and voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, in a foreign language if certain basic conditions exist. First, the Director of the Census must determine that more than 5 percent of the citizens of voting age in a jurisdiction, are members of a single language minority who do not speak or understand English adequately enough to participate in the electoral process. Second, the Director of the Census must also determine that the illiteracy rate of such persons as a group is higher than the national illiteracy rate.

I believe, of course, that our citizens should learn the English language. I also believe, however, that providing foreign language assistance for the purpose of exercising the right to vote is appropriate. This assistance is no real disincentive to learn the English language.

Unfortunately, while other provisions of the Voting Rights Act expire in the year 2007, section 203 of that act expires in just a few days. We need to extend it.

The growth in the minority communities, covered by section 203, indicates that continuing to remove language barriers will further enhance voter participation by language minorities.

The number of registered Hispanic voters in Arizona, California, Colorado, New Mexico, and Texas doubled from 1976 to 1988—from just over 1½ million to over 3 million. Nineteen-ninety census data show that the Hispanic population in this country grew by 53 percent; the Asian-Pacific Islander population grew by 107.8 percent, and that of the American Indian, Eskimo, and Aleut communities increased by 37.9 percent.

I also note that there is a serious flaw in the current statute that the current measure addresses. Because of the percentage threshold provisions of the statute I mentioned earlier, the following anomaly exists:

A county with 10,000 citizens of voting age, including 501 citizens of language minority, with an illiteracy rate

higher than the national average, and who do not understand or speak English well enough to participate in the electoral process, must provide bilingual assistance to those 501 citizens. A county with 500,000 voting age citizens, including 25,000 citizens of a language minority, need not provide assistance to those 25,000 citizens. Why? Because those 25,000 citizens do not constitute more than 5 percent of the county's voting age population. A statute that requires one county to provide assistance to 501 members of a language minority, but does not require a county with 25,000 members of a language minority to provide the same assistance, makes no sense.

The substitute amendment addresses this anomaly. It sets an alternative numerical threshold, covering jurisdictions with over 10,000 limited English proficient persons as a trigger for section 203's coverage, even if they amount to less than 5 percent of the jurisdiction's voting age population.

This bill also makes needed adjustments in the current statute to assure that native Americans are given a realistic opportunity to avail themselves of the benefits of the law.

I would like to address some of the criticisms that my good friend and colleague on this side of the aisle, Senator SIMPSON, has made during Committee consideration of the bill. I know he will fully elaborate on those criticisms on the floor, and I respect both his sincerity and his good will in raising his concerns. They are serious concerns and they deserve serious answers.

It is claimed that section 203 has been ineffective. One indicia of this alleged ineffectiveness is that Hispanic registration has only increased from 48 percent in 1978 to 51.9 percent in 1990.

In response, I would make three points:

First, any increase in registration is a plus. Second, these nationwide data are very misleading because section 203 has applied in less than 10 percent of the counties in the country. That is, the increase in Hispanic registration may have been greater if section 203 had been applied more widely. Third, in any event, people decline to register to vote for a variety of reasons, including difficulty of access to places of registration, a feeling of lack of responsiveness by the political system, and so on.

The better question is, what would Hispanic registration look like in the absence of section 203?

Next, it is claimed that the percentage of Hispanic citizens reported voting declined slightly from 34.3 percent in 1978, to 33.8 percent in 1990, and that while white voter participation has declined, Hispanic voter participation has declined in greater proportion.

Again, the more relevant data would be not nationwide statistics, but statistics from counties where section 203 applied. Further, the better and more difficult question is, what would Hispanic voter participation be like in the absence of section 203 in those jurisdictions where it applied? And, again, I stress that people decline to vote for a whole host of reasons and it does not follow from such voting data that section 203 is ineffective. Such a test puts an impossible burden of proof on this modest provision. The availability of bilingual materials is irrelevant if Hispanic voters, for example, think they have little stake in the outcome of a particular election, and of course, the same goes for any other voters as well. I will have more to say about the use of bilingual election materials later in this debate.

I also believe, with all due respect, that comparing Hispanic registration rates to black registration rates following enactment of the Voting Rights Act is totally inappropriate. The barriers to black registration were often much more overt than barriers to Hispanic registration. Thus, a law like the Voting Rights Act could not have the kind of immediate and dramatic impact on Hispanic registration that it has had on black registration.

I also share the desire that Americans, native born, or those who who were born elsewhere, learn the English language. I sincerely believe, however, that the two or three times a year a person may avail himself or herself of bilingual registration or voting materials is no real disincentive to learning English. Without these materials being available for those who need them, I believe it is more likely that these individuals simply will stay home and not vote, rather than learn English. I think they should be able to vote and should also learn the English language well enough not to need bilingual materials in the future. But that is a task for schools and adult education programs. It might be desirable for the Subcommittee on the Constitution to look at how our schools teach English to children who do not speak the language, and the role the Federal Government should play under title VI of the 1964 Civil Rights Act and other applicable statutes. It might also be desirable for the Immigration Subcommittee to investigate whether immigrants really do learn English before they obtain citizenship. But assisting people in voting, in my view, is not the source of the concerns of which my friend from Wyoming spoke in committee.

Finally, Mr. President, I want to address another concern. Section 203 requires that the Census Bureau shall determine whether the requisite number of citizens "are members of a single language minority who do not speak or understand English adequately enough to participate in the electoral process. * * *" This limitation of coverage to those who do not speak or understand English adequately enough to participate in the electoral process was added in 1982 by Senator NICKLES.

There has been some criticism of the manner in which the Census Bureau has carried out its duties under section 203. The committee report, however, puts the matter in proper perspective and I want to quote two paragraphs from the report:

> The Nickles amendment required the Bureau of the Census to identify covered jurisdictions using existing data on English language proficiency. After consultation with the Department of Justice, the Bureau used both its own decennial census long-form question on language ability, as well as the Department of Education English Language Proficiency Study [ELPS]. The census question asks persons who identify themselves as speaking a language other than English in the home to evaluate their own English language proficiency. There are four possible answers: Very Well; Well; Not Well; Not at All. The ELPS study measured the basic English proficiency of adults from English and non-English speaking backgrounds. The study assessed the ability to do such ordinary tasks as following simple oral directions and filling out forms.
>
> The Bureau of Census found that those non-English speakers who reported that they spoke English "very well" failed the ELPS test at a rate similar to those for whom English was the only language. On the other hand, those who reported that they spoke English less than "very well," that is "well," "not well," or "not at all," all failed the ELPS test at similar rates. The Bureau concluded that persons who spoke English less than "very well" would be "at an obvious disadvantage in terms of being able to do the basic tasks associated with voting, such as following instructions for registering, [or] reading the paper to determine where one must go to vote. * * *" (Internal Bureau of the Census Memorandum dated February 4, 1985, detailing section 203 coverage determinations). The Bureau concluded that for purposes of determining section 203 coverage, those who spoke English less than "very well" were truly in need of language assistance.

Thus, while on the surface, it may seem misplaced for the Census Bureau to determine that those who speak the English language well do not speak it adequately enough to participate in the electoral process, one must take a look at the Census Bureau's rationale. The label "well" can signify almost anything, and the Census Bureau's explanation for regarding those who reported they spoke English well as in need of language assistance is perfectly reasonable.

Section 203 expires in a matter of days. We need to strengthen and extend it. The Simon-Hatch measure does this and I urge its adoption.●

Mr. DOLE. Mr. President, it was my understanding that we could do this in an hour and a half and it has already been an hour and a half. I hope maybe the distinguished Senator from Illinois might propound a unanimous-consent agreement. I think the Senator from Delaware wants 10 minutes, the Senator from South Carolina, 7 minutes,

and the Senator from Idaho 5 minutes, and I do not know what the Senator from Wyoming has in mind

Mr. SIMON. What I have right now is 10 minutes to Senator BIDEN, 7 minutes for Senator THURMOND, 10 minutes for Senator SYMMS, 5 minutes for Senator SIMPSON, and 5 minutes for myself. This is on the general debate, not on amendments.

The PRESIDING OFFICER. Does the Senator propound that as a unanimous-consent request?

Mr. SIMON. Yes.

Mr. SIMPSON. Mr. President, let me review again for those who would be listening that it is Senator BIDEN, 10 minutes; Senator THURMOND, 7; Senator SIMON, 5; myself, 5; and Senator SYMMS 10. I do not believe I have any other requests on my side of the issue. And so this would be the request propounded.

Mr. SIMON. That is correct.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request?

Without objection, it is so ordered.

Who seeks time?

Mr. DOLE. Is that for debate on the bill?

Mr. SIMON. This is just on the bill itself, not on the amendments.

The PRESIDING OFFICER. Who seeks time? The Senator from South Carolina is recognized for 7 minutes.

Mr. THURMOND. Mr. President, I rise today in opposition to H.R. 4312, the Voting Rights Language Assistance Act of 1992. Although I firmly believe that we should take all reasonable steps to assure that all citizens of voting age have the opportunity to vote, I oppose this legislation because of two concerns: First, a lack of factual documentation or statistical information which would justify extending the language assistance provisions of the Voting Rights Act for 15 years; and second, a concern that this bill will discourage the use of English as a common language, a goal which I believe is desirable if we are to create a society built on unity, inclusion, and commonality.

Mr. President, although I do not question the good intentions of the sponsors of this legislation, the fact is that there is very little factual or statistical information to support the reauthorization of the language assistance provisions of the Voting Rights Act for 15 years. As my colleague from Wyoming has already pointed out, no studies have been conducted to demonstrate how successful these provisions have been, or why they need to be reauthorized and expanded. In fact, the statistics that are available suggest a drop in voter participation by Hispanics, one of the largest language minority groups involved. Without information that the language assistance provisions are working, and in view of the substantial financial burden this will cause local jurisdictions, I question the wisdom of extending and expanding them, especially for a period of 15 years. It is possible that in some jurisdictions three, four, or five different ballots would have to be prepared to accommodate the different language minorities. Mr. President, that is a burdensome undertaking for most local jurisdictions.

Of greater concern to me however, is the fact that the required use of bilinqual ballots may discourage the learning and use of English as a common language. As many of my colleagues are aware, like the late Senator Hiyakawa of California, I have long been a proponent of the use of English as the official language of the United States. For over 200 years, the use of English has been a unifying force in our country and provides us with a shared national identity. I believe, largely as a result of English being our common language, that America has developed into a cohesive and stable democracy while, at the same time, accommodating and appreciating the rich traditions of our different ancestries.

Mr. President, it is important to note that encouraging and fostering the use of the English language in what Senator SIMPSON refers to as our public culture, is not meant to discourage the use of foreign languages or the appreciation of foreign cultures. It is clearly appropriate for people to celebrate their history and take pride in their heritage. It is highly commendable that people want to learn about their roots and identify with their past. All people should preserve their heritage and culture.

Nor is the use of English as a common language meant to discourage the teaching of foreign languages in our schools and colleges. I am pleased that so many students are learning foreign languages in school today. I praise our schools for their efforts in this area.

However, Mr. President, the use of bilinqual ballots may actually be harmful to the very people who use them. It may give them a false sense of security that they do not need to learn English. In reality, learning English and thereby assimilating into society will provide language minorities the best opportunity for success in America. They must know the language to compete as equals in the labor force and become self-sufficient. Moreover, in my view, it is essential for our economy to have an accepted national standard of communication in business, education, law, and politics. It is only in this way that we can develop the unifying strength that is necessary if we are to remain competitive within the international community.

In conclusion, Mr. President, let me reiterate my strong belief that we should assure that all citizens of voting age have the opportunity to vote. I have long recognized that the right to vote is one of the most precious rights that the citizens of this great country possess. As Governor of South Carolina, I supported and fought for the elimination of all poll taxes in my State. However, in the absence of documentation that language minorities benefit from the assistance of bilingual ballots, and because of my strong belief that English as a common language provides the unity and democratic stability that has made this country great, I intend to vote against H.R. 4312. I urge my colleagues to do the same.

I yield the floor, Mr. President.

The PRESIDING OFFICER. The Senator from Idaho is recognized for 10 minutes.

Mr. SYMMS. Mr. President, I rise tonight to oppose this legislation before the Senate. I would like to compliment my colleague from Wyoming for most of what he said in his lengthy speech. There were a couple of areas that he knows about that I might take issue with him, but I will not tonight.

He has it figured out and is right on target. The premise behind this legislation simply makes this bill America's version of apartheid, that we in this Senate and in this Government fought so hard to help the people of South Africa rid themselves of.

If you can keep a group of people speaking a language other than English, then they will never be able to progress up the social ladder, up the economic ladder—up the ladder of success and opportunities which are available for most English speaking citizens of the United States of America, or residents of this great country.

Mr. President, I had one story several years ago, here in the Senate, from an area where a family from Tonga had moved to the United States. The only language they spoke was Tonganese. They put their children in the bilingual education program in the public school system of their community. At the end of a year their children were fluent in Spanish, but no one in the family could speak English and they were still having problems seeking employment.

I happen to come from Idaho, Mr. President, which has one of the largest Basque populations outside of the Pyrenees. One of the Basque leaders in my State is the Secretary of State, Pete Cennarusa. And Pete Cennarusa makes it clear when he started the first grade, in Bellevue, ID, there was no one in his family who could speak English. But he was under instructions to go to school, learn English, come home and speak it. And they were under very strict rules to speak only English in their household so they could become active, productive, successful citizens in our State, in our society.

Our former colleague, Senator Laxalt, told me the same story in his case with his family in Nevada; his parents required the entire family to speak English in the household so they could

learn English so they could assimilate into the society. And then they could keep their ties to their native Basque language and their culture, which we have seen happen in my State. But they have learned to speak English so they can be successful—lawyers, doctors, business people, workers, teachers, and so forth.

I support what the Senator from Wyoming and the Senator from South Carolina have said, and I recommend a vote against this bill. Whether or not bilingual ballots have had any positive effect on minority participation in elections, one thing is clear: They encourage new citizens in this country to stay on the outskirts of the mainstream. I am amazed when I listen to my colleagues praise this legislation. I am even more shocked to find out that the administration has signed off on this legislation—to extent this for 15 years. The bill is based on a faulty premise. Instead of being a melting pot, we are encouraging people to stay on the outside of the culture. The melting pot has been a great benefit to immigrants who have come here.

Mr. President, Senator SIMPSON outlined the weaknesses in this bill and those weaknesses are indeed great. Who is going to pay the electoral jurisdictions for complying with this cumbersome bill? Just set aside the philosophical problem.

My point, Mr. President, is that this bill does nothing more than make it easy for people not to learn English. That is what it all amounts to, to separate those people in our society, to divide them so they simply cannot be full-fledged participants in the bounty of this great society, there will be opportunities that will be denied them.

Who is going to pay, for example, Los Angeles County to have a completely different system of voting machines in order to have six different languages featured on the ballot? Would it not do more good, I would ask, Mr. President, for the minorities in Los Angeles to help rebuild the physical and social damage done by the riots than to indulge in this kind of costly sociological experiment?

Mr. President, we heard a lot about studies and research. But all the studies and research are formed by assumptions and my misgivings about this bill are precisely the underlying assumptions that form it: The assumption that a new citizen should be kept from joining the United States of America mainstream and speaking the United States of America's mainstream language, which is English; the sponsors assume that somehow we are helping these people by encouraging them to speak a different language; the assumption that immigrant groups are best served by keeping them identified in ethnic groups, not culturally, which is their own business.

If culturally we want to have a Basque center in Boise, ID, I am for it. We have the Basque dancers which are famous worldwide from Boise, ID, and we are proud of it. If we want ethnic groups to keep their cultures, that is a plus for our society. It makes us all richer as a result of these other cultures. And that is their business, their religion, their tradition, their personal preferences.

But, politically, which is the official part, why would we want to encourage people by printing public ballots in a different language when only citizens, after all, are allowed to vote? And citizens, if they are born in this country, have access to public education and have the opportunity to learn English. If they are naturalized citizens, I remind my colleagues that they have to pass the English language test in order to become a citizen.

So let us face it, Mr. President, the enforcers of this provision will be an army of bureaucrats who will keep those ethnic groups in a condition of what I would like to call tonight the "ballot apartheid."

They will be prey to those who want to use them as voting blocks and politically identifiable minorities for political purposes.

Mr. President, I say let us be inclusive, not exclusive. Let us have one ballot, one language for all American citizens, and let us welcome all citizens of all languages to participate fully in our electoral process in the same language that we use on the Senate floor and throughout our political institutions. Let us not adopt laws that further divide our citizens by pretending to be inclusive. This is not an inclusive piece of legislation. Let us not encumber our voting jurisdictions for more than 15 years with an unproven and counterproductive measure.

Mr. President, I want to speak just a little bit about the politics of this and refer my colleagues to our great, late colleague, Sam Hayakawa.

Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. One minute fifteen seconds.

Mr. SYMMS. Mr. President, I ask unanimous consent that I might speak for 5 more minutes.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request?

Mr. MITCHELL. Will the Senator yield?

Mr. SYMMS. I will be happy to yield.

Mr. MITCHELL. Mr. President, I do not object to the Senator speaking 5 more minutes. We have a lot of Senators anxious to conclude this bill. It had been my original hope that the bill could be completed sometime in an hour and a half or 2 hours. We are already at that point.

Mr. SYMMS. Mr. President, I assure the majority leader I can wrap up my remarks very briefly.

Mr. MITCHELL. I understand from the managers that there is a possibility of reducing the amendments to two and get a vote underway on both of them in approximately 20 minutes. I hope we can keep to that schedule.

Mr. SIMON. I think we can expedite it, if the majority leader will yield.

My colleague wants 20 minutes on each amendment; is that correct?

Mr. SIMPSON. Mr. President, while the majority leader is here, I do have one member of the body on our side of the aisle who wants 5 minutes during one of those amendments.

So I ask, and I think that I, of course, would let the majority leader propound it, but it would be two amendments, 20 minutes on each amendment, equally divided, finish the debate on both of them, and then vote.

Mr. President, we can possibly be yielding back a good bit of that time. I am not able to discern that at this minute.

Mr. SYMMS. Mr. President, does the Senator from Idaho still have the floor?

The PRESIDING OFFICER. The Senator from Idaho has a unanimous-consent request pending.

Mr. SYMMS. The Senator from Idaho asks unanimous consent to speak on the bill for 5 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SIMON. Reserving the right to object, I just want to assure the majority leader and everyone else, I do not think we will use the full time on the amendments on our side.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. SYMMS. Mr. President, I want to say—and I have the greatest admiration and respect for my colleagues on the floor tonight—I have a strong philosophical difference of opinion as to what it is the majority leader and the majority party and the administration, as I understand it, are trying to do in moving this legislation. But I in no way impugn the motives of my good friend from Illinois, the majority leader, or others who are trying to push this bill through.

I want to say, Mr. President, this bill is typical of what is wrong with inside-the-beltway mentality. It is a noble cause, it sounds great, but let me give an example of how this bill really works.

What happens is—and the Senator from Illinois will correct me if I am incorrect—if you have over 5 percent of a group in a voting area, then you print a ballot in that language; is that correct?

Mr. SIMON. That is current law. We are changing that.

Mr. SYMMS. To what?

Mr. SIMON. To 10,000.

Mr. SYMMS. Oh, to 10,000.

Mr. SIMON. In certain jurisdictions.

Mr. SYMMS. So, in other words, what happens is if you have an area, let us say San Francisco, for example, or

Los Angeles, or Boise, ID, or Joliet, IL, or Springfield, IL—if there happen to be 10,000 people with Japanese surnames, then the law would require that that local jurisdiction print ballots in Japanese. Or if 10,000 people have surnames of Chinese, they print it in Chinese, or Spanish, they print it in Spanish. It may be that none of those people use any language, Mr. President, except English.

Mr. SIMON. If my colleague will yield.

Mr. SYMMS. Let me finish my point and then I will be happy to yield.

The late Senator Hayakawa, an author, renowned in the United States and around the world as one of the leading semanticists of the English language, believed in the power of language because language communicates what is in the hearts and minds of the people communicating.

Because his name was Hayakawa, he was listed in the group that triggered a requirement that the local jurisdiction where he lived had to print ballots in Japanese. Now, it just so happened this great linguist did not speak, read, or write Japanese. He was an English language linguist, an American citizen, naturalized. He was born in Canada, came to the United States, was naturalized, was better in English than anyone I have known who served in this body other than maybe the President pro tempore, and yet because his name was Hayakawa he was a statistic that triggered this law.

Now, I do not have the capability to talk like Senator Hayakawa and Senator BYRD and some of the real linguists can do, but I can communicate the ideas I am trying to get across. I hope when we get to the amendments we would at least shorten the authorization period until more sanity can reach Washington and we can stop all this nonsense and print ballots in one language: English.

Mr. SIMON. Will my colleague yield?

Mr. SYMMS. I will be happy to yield.

Mr. SIMON. What the Senator is describing is the situation before 1982. In 1982, we adopted the Nickles amendment offered by our colleague from Oklahoma. And now, because your surname is Hayakawa or whatever, that does not qualify. It is people who have difficulty speaking the English language.

Mr. SYMMS. Who makes that determination? How many thousands of people do the taxpayers have to pay to determine that, when in fact you cannot vote in elections unless you are a citizen of the United States of America. I know my good friend would agree with that. Unless you are a citizen, you cannot vote. How do you get to be a citizen? A, you are born here. If you are born here, you have access to the public schools. You can learn English. If you are naturalized, you have to pass the naturalization test of which English is part. So what we are doing here is keeping people segregated out and separated through the language.

Mr. President, I could not agree more with my colleague from South Carolina and my colleague from Wyoming. I know that my colleagues who push this bill are sincere, and they think this is going to be helpful to these people. But this is just a way of keeping people from having an opportunity to climb up the economic ladder.

The PRESIDING OFFICER. The time of the Senator has expired. Who seeks recognition?

Mr. BIDEN. Mr. President, I do not plan on using the 10 minutes. I will attempt to accommodate my colleagues.

I rise in strong support of S. 2236, legislation to extend that most important incident of a free and democratic nation—the right to vote—to those Americans for whom language is a barrier to participation.

As we all know the current law expires today. Primary elections will occur in some States—for example, New York—as early as next month. Thus, it is imperative that we act now to complete our work so that the bill may become law immediately.

I commend my friend from Illinois, Senator SIMON, for his tireless efforts to ensure that the Senate pass this bill in a timely fashion. Senators SIMON, HATCH, and others on the Judiciary Committee worked diligently to produce legislation that not only extends, but improves on, the current law.

This reauthorization of the language assistance provisions brings into the voting process thousands of Americans whose English is poor, but who live in areas not covered under the expiring law.

For example, Latino and Asian American communities in some of our largest cities and counties—and these ethnic communities are huge by any measure—will now enjoy the benefits of multilingual language assistance.

Moreover, native Americans living on reservations that cross jurisdictional lines will be covered as an entire reservation, eliminating the current anomaly under which some members of a native American community receive voting assistance—but others don't—simply because the reservation on which they live straddles county lines.

This legislation is a positive bill of inclusion—a bill that truly promotes our democratic ideals. As the country prepares for the elections coming this fall, no bill holds more symbolic or practical importance.

Reauthorization of the language assistance provisions is a commonsense solution to the difficulties that many Americans face in voting. What we are talking about here is providing voting assistance to people who are already entitled to vote. Those Americans for whom English proficiency is elusive deserve an effective means of exercising the franchise.

Those few critics of the bill suggest that passage will discourage learning English. By passing this bill, we do not say that English language proficiency is unnecessary. No one here disputes the importance of mastering the language in which our business discourse generally occurs.

I hope that all those who don't speak or read English well will improve their English language skills to increase their full participation in all aspects of our society.

But participation in our democratic process is too critical an act to suffer delay. At a time when Americans vote in record low numbers, we must encourage our citizens to vote—not prevent them from voting because of language difficulties.

The fact is that thousands of Americans who are entitled to vote face serious difficulty because they don't speak, read, or write English well enough to exercise confidently their fundamental right.

This reauthorization of the language provisions of the Voting Rights Act quite sensibly acknowledges that truth and provides the mechanism through which the problem of language barriers is eliminated.

Again I thank my colleagues for all their tremendous work in ensuring that this serious problem is addressed. I urge the swift passage of this bill. Time is of the essence, and the thousands of Americans who face language barriers need our swift action.

Mr. President, it always intrigues me—I have been in the Senate going on 20 years now—the way in which Senators on both sides of the aisle, liberal and conservative, are able to create issues that do not exist.

Now this bill is characterized as promoting apartheid. It is being talked about whether or not we print ballots only in English depends on the future of whether or not we are an English-speaking country. The way it is being characterized is that we vote for this legislation and it becomes law, we are going to ensure that people who otherwise might want to learn to speak English, need to learn to speak English, will now no longer speak English because the incentive that they otherwise had is taken from them. And, if in fact the ballots are only in English, we are told, anyone who speaks another language will be inclined to do what 3, 4, 5, 6, 7, 8, 10 generations of Americans who speak English—we could not get them to do anyway—and that is go vote.

We cannot get white Americans and their families who have lived here for 150 years to show up and vote. But we are told tonight that if we just make sure Hispanic Americans and Asian Americans, and so on, know that the only way they can vote is master the

language, they are going to run out and vote.

What poppycock. It is a little bit like saying if an American, or any person, citizen or otherwise, knows that if they go to the hospital the hospital attendants will not speak the language that they speak, they will be unable to communicate, so in order to induce them to learn English quicker we will make sure that in inner city hospitals we do not have anybody in those hospital emergency rooms who speaks Spanish or any other language because, if they know that and they may get shot in a drive-by shooting and they are going to show up in the emergency room and they are not going to be understood, they are going to sign up for the English classes they cannot get into, because there is already a waiting list, because now they are induced to do it because we will withhold their ability to get adequate medical health care, because they will not be able to communicate to the nurses or the doctor where it hurts, what happened.

What are we talking about here? Look, this is pretty simple. Do we want to get more people invested in the system? How do you get them invested in the system? You get them to vote. You get them to show up. When they vote, they say, you know, it matters a little bit; I better get more involved. I can be involved.

If you want to encourage someone to learn to speak English and become fully integrated in society in every way, get them involved in the political process. But if they feel they have no stake in the political process because they cannot even go in and read the ballot with any degree of certainty, then what stake do they have? Are they likely to participate in every other way or are they going to do what my friends say: I am not able to read the ballot in English. Therefore, I cannot vote. Therefore, I am going to go down and I am going to go down and I am going to do what 45 percent of the Americans do not do when they can read the ballot. I am going to go down and make this double extra effort to learn to speak English so I can do something that Americans who speak English are not doing anyway.

Mr. President, this has nothing to do with apartheid. And I might add the people who are talking the most about apartheid here are the people who were the least reluctant to take any action to do something about dismantling the apartheid system in South Africa when it was underway.

I respect their position. I think they are dead wrong. But this is not apartheid. This is real simple. Do we want to increase the prospect of people showing up to vote, investing in the system, participating in the system, which will in turn give them a bigger stake and a greater rationale to think that if, in fact, they are able to master the language they will be able to be treated as and will be treated as equal?

One last thing, folks, we should not fail to understand. People who do not speak English today by and large in this country are people who have been rejected by the majority of this society, having no bearing on the fact that they do not speak English.

We have a long track record in this country, to our shame, of not bending over backward to provide the franchise to Asian-Americans. We have a long history in this country—having nothing to do with the fact that a Japanese-American can or cannot speak English—of the Japanese-American feeling the sting of prejudice and being denied the fruits of his or her labor in this country because they are Japanese.

Listen to my colleagues. You would think that the key to this is to just make sure they cannot vote unless they can read the ballot in English, and that will open up—to all those who have been subject to prejudice—that will open up for them, that will give them the golden key to the kingdom.

This is simple. If you want to encourage people to vote, these are people who are American citizens who have difficulty with the English language, for a whole raft of reasons which I do not have time to go into. Does it make sense to give them the franchise in a real way, by making it easier for them to vote?

And, if it does, does that mean that they are going to then go home and say: You know, I am able, once every 2 years, to walk in and read something in Spanish; and therefore I have no incentive to learn English at all. I can do it once every 2 years now, so why learn English to be able to get the better job? So why learn English to be integrated more into the society and be able to have the benefits of the society? So why learn English to make life easier for me and my children? I do not want to do that anymore. Guess what; I get to read Spanish once every 2 years in an official undertaking. I get to walk in and vote. So why? I have no incentive now.

With all due respect to my good friend from Wyoming, my friend from Idaho, and others, I think that is a preposterous argument.

I thank my colleagues for listening.

I yield the floor. I yield the remainder of my time.

The PRESIDING OFFICER. Who seeks recognition under the time agreement?

Mr. SIMPSON addressed the Chair.

The PRESIDING OFFICER. The Senator from Wyoming has 5 minutes, and the Senator from Illinois has 5 minutes remaining.

Mr. SIMPSON. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

UNANIMOUS-CONSENT AGREEMENT

Mr. MITCHELL. Mr. President, I ask unanimous consent that there be 20 minutes equally divided in the usual form on each of the following amendments:

Simpson amendment on the 5-year extension.

Simpson amendment on Federal funding cost to local jurisdictions.

I further ask unanimous consent that the two amendments be debated consecutively tonight.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

UNANIMOUS-CONSENT AGREEMENT

Mr. MITCHELL. Mr. President, I ask unanimous consent that just prior to the adjournment or recess of the Senate for the August recess, the majority leader or his designee be recognized to make a motion to disagree to the House amendments to S. 12, the cable bill, and agree to the request for a conference with the House, and that the Chair be authorized to appoint conferees; and that the foregoing be in order and occur without any intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MITCHELL. Mr. President, I yield the floor.

AMENDMENT NO. 2911

(Purpose: To modify the application of the bilingual voting requirements and require certain studies)

Mr. SIMPSON. Mr. President, I send a amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Wyoming [Mr. SIMPSON] proposes an amendment numbered 2911.

Mr. SIMPSON. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 2, line 3, strike "2007" and insert "1997".

On page 2, line 18, strike "10,000" and insert "20,000".

At the end of the bill, add the following:

SEC. . REPORT.

(a) REPORT.—Not later than May 1, 1997, the director of the Census, in cooperation with the Attorney General, shall prepare and submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate a report that shall include the following information:

(1) Voting participation rates among each language minority group, both on a national basis and for each covered jurisdiction.

(2) Voting participation rates among all voters as a group and English-speaking vot-

ers as a group, both on a national basis and for each covered jurisdiction.

(3) Any increases or decreases in voting participation for each of the groups described in paragraphs (1) and (2), both on a national basis and for each covered jurisdiction.

(4) The names and qualifying information for each State, and each political subdivision, in which at least 10,000 persons are covered individuals.

(5) The names and qualifying information for each State, and each political subdivision, in which at least 20,000 persons are covered individuals.

(6) The names and qualifying information for each covered jurisdiction.

(7) For each State, political subdivision, or covered jurisdiction described in paragraph (4), (5), or (6), information regarding—

(A) whether multilingual voting assistance is available in the State, political subdivision, or jurisdiction; and

(B) if such assistance is available—

(i) the type of such assistance that is available; and

(ii) the number of persons who utilize such assistance, as an absolute number and as a percentage of the general population and of language minority groups.

(b) DEFINITIONS.—As used in this section:

(1) COVERED INDIVIDUAL.—The term "covered individual" means an individual who is—

(A) a citizen described in clause (i) of section 203(b)(2)(A) of the Voting Rights Act of 1965 (42 U.S.C. 1973aa-1a(b)(2)(A));

(B) a citizen in a language minority described in clause (ii) of such section; and

(C) a citizen in a covered jurisdiction.

(2) COVERED JURISDICTION.—The term "covered jurisdiction" means a jurisdiction that is—

(A) a covered State or covered political subdivision under paragraph (2)(A) of section 203(b) of the Voting Rights Act of 1965; and

(B) is not excluded from the application of such section under paragraph (2)(B) of such section.

(3) LANGUAGE MINORITY GROUP.—The term "language minority group" has the meaning given the term in section 203(e) of the Voting Rights Act of 1965.

SEC. . STUDY ON VOTING FRAUD.

(a) STUDY.—The Attorney General shall conduct a study, covering all covered jurisdictions (as defined in section (b)(2)), to determine—

(1) whether multilingual voting assistance under section 203 of the Voting Rights Act of 1965 has been used, or implicated in efforts, to violate other laws, particularly laws requiring the use of documentary identification and citizenship as a requirement for voting; and

(2) if so, the extent to which the multilingual voting assistance has been so used or implicated.

(b) REPORT.—Not later than June 1, 1995, the Attorney General shall submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate a report setting forth the findings of such study.

Mr. SIMPSON. Mr. President, this amendment provides for a 5-year extension of the Bilingual Ballot Program, instead of the bill's 15-year extension. It also allows for the expansion of the program, including the new coverage for native American reservations, but the amendment increases the threshold requirement from the bill's 10,000 person level to 20,000 persons. Finally, the amendment requires a report from the Attorney General and the Census Bureau providing statistics on the effectiveness of bilingual ballots and information on voter fraud in the program.

As I have stated, I believe that a 15-year extension and expansion of the Bilingual Ballot Program is unwise:

First, there is no evidence that English language ballots cause discrimination, nor that bilingual ballots remedy any type of discrimination;

Second, there is no evidence that bilingual ballots have increased voter participation; and

Third, I believe that bilingual ballots may have the effect of keeping language minorities separate and will reduce the pressure to learn English.

I have seen no evidence that English language ballots cause voting discrimination nor that bilingual voting assistance remedies any other form of voting discrimination that may exist. In fact, the proponents of this legislation do not state that English-only voting practices in any State or jurisdiction are discriminatory. Instead, the proponents assert only that bilingual ballots are necessary because Hispanics, Asian Americans, and American Indians, and Alaska Natives have endured educational inequities, high illiteracy rates, and low voting participation.

I do not argue in any way that educational opportunities are equal for all; but we cannot solve illiteracy problems and educational failures with bilingual ballots. We have to do better than that.

Multilingual voting assistance has not been proven effective. The Census Bureau statistics, based upon current population reports, show that bilingual assistance has not brought a higher percentage of people to the voting booths.

Why should we blindly reauthorize for 15 years, a program which, after 17 years. Not only has not been effective, but which may further isolate minorities?

The original proponents of bilingual ballots argued that a higher percentage of persons would vote. For Asians, American Indians, and Eskimos, I have seen no GAO or Census Bureau statistics of any kind on voter participation. Regarding Hispanics, GAO has reported that there has been a slight decrease in the percentage of Hispanic voting.

I know that many of the groups which advocate the 15-year reauthorization of bilingual ballots have conducted their own studies. I have no doubt that their studies may contradict these Census figures, yet, even MALDEF [Mexican American Legal Defense and Education Fund] has admitted that Hispanic voter participation has decreased since 1975, the date of enactment of the bilingual ballot requirement.

In response to the following question: "What was the latino voter participation rate in the year before the enactment of section 203, and what is it in the most recent year for which you have figures?" MALDEF answered: "Section 203 was enacted in 1975. 22.9 percent of 'Hispanic origin' voters reported voting in the 1974 congressional elections. 21 percent of Hispanic origin voters reported voting in the 1990 congressional elections." That is a decrease of 1.9 percent, even by MALDEF's own calculations.

Again, the bottom line is that bilingual ballots have not been proven to increase the voting participation of any of the groups which this legislation is intended to benefit.

My amendment allows a 5-year extension of the Bilingual Ballot Program, instead of the 15-year extension in the bill. This will give us time to collect and evaluate the official calculations of voting participation of the population. It will give us some comprehensive data on the effectiveness of the bilingual ballot program.

My amendment also increases the threshold number of persons necessary to come under the Federal mandate to provide bilingual ballots. The Simon bill establishes a new, lower threshold for requiring State and local governments to provide bilingual ballots. Current law requires that: First, 5 percent of the potential voters of a jurisdiction are of a single language minority and; second, that the illiteracy rate of the minority language voters of that State or subdivision is higher than the national rate.

The House bill lowers the 5 percent threshold for local governments by allowing as few as 10,000 persons—which could be significantly less than 5 percent of the total population—to trigger the requirement for bilingual ballots. This new lower threshold will add new jurisdictions to those required to provide bilingual ballots.

We won't really know just how far-reaching this new standard will be until the Census Bureau releases its final determinations. The Census Bureau has stated that the calculations which they have made for the judiciary committee are not final determinations.

My amendment changes the bill's requirement from 10,000 to 20,000. The Justice Department has indicated that it will support the 20,000 threshold. In a March 30th letter to Senator SIMON, the Justice Department states:

> Because we think that it is desirable to cover these large jurisdictions without unnecessarily burdening large numbers of other jurisdictions, we would support legislation that contained a numerical trigger of 20,000 minority language individuals. . . ."

The Justice Department reasons that while the 10,000 threshold would increase the number of jurisdictions affected, it would not provide a significant increase in persons benefited under the 20,000 threshold, and would,

in fact, be unnecessarily burdensome for large numbers of additional jurisdictions.

My amendment also requires a report by the Attorney General and the Census Bureau. The report will provide information on both local and national voting participation rates for all language minority groups; voting participation rate for all citizens; the qualifying information for each jurisdiction in the program; and the types of multilingual voting assistance available in each jurisdiction which is required to provide it under this bill.

The report's survey of the types of multilingual language assistance provided in each jurisdiction is important. While many people may believe that this program only provides actual ballots—we tend to refer to the program as bilingual ballots—it actually is much more broad than mandating just ballots.

The term voting materials is defined in H.R. 4312 as registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots.

Relating to the electoral process. That's a pretty broad statement. That language could conceivably cover a lot of different printed materials. The groups which are interested in this bill could conceivably make this as expansive as they would like. The regulations issued under section 203 of the current law state:

> A jurisdiction is more likely to achieve compliance with these requirements if it has worked with the cooperation of and to the satisfaction of organizations representing members of the applicable language minority group. (Section 55.17 of the regulations.)

Those very organizations are the ones which are in the Halls of the Senate and of the Capitol today. Those organizations are the ones which have filed lawsuits, challenging a jurisdiction's practices.

My report will give us an idea what each jurisdiction really is providing. With that information we can decide if the requirements are too broad, or quite appropriate, or we could even decide they are not broad enough.

My amendment also requires the Attorney General to conduct a study on voting fraud in those jurisdictions which will be required to provide minority language assistance under the Simon bill. The report should determine if multilingual voting assistance has been used or implicated in efforts to violate other laws, particularly laws requiring the use of documentary identification and citizenship as a requirement for voting—such as voter registration.

There have been several instances where voter registration materials were, or may have been used to register noncitizens to vote. The most notable one occurred in San Francisco where U.S. Attorney Russoniello conducted an investigation of bilingual ballot users, on the information that many were noncitizens. Russoniello received information that persons registering the noncitizens had told the potential, but ineligible, voters that they were, in fact, eligible to vote if they were married to a U.S. citizen (which only gets you a green card, if you apply to the INS) or if they had lived in the United States a long time (which never is a guarantee of citizenship). Also, the Spanish translation of the registration form erroneously stated that a registrant should be rather than must be a citizen.

The investigation revealed that 27 percent of the persons examined proved to be noncitizens, 40 percent had no records so that citizenship could not be determined, and only 32 percent were, in fact, citizens. (The investigation was terminated without further resolution.)

The San Francisco investigation, and another in Chicago, at the very least tell us that we should be monitoring the possible misuse of bilingual voting assistance materials.

My amendment starts that monitoring process.

Finally, the proponents argue that we extend this program for 15 years so that it ends at the same time several other programs in the Voting Rights Act expire. I do not believe that this is an adequate reason for granting such a long extension for a program which has not been proven effective. Let's extend the program for 5 years while we are getting the objective facts and statistics. Then we can take another informed look at the program and extend it further if it works. We may find that the program has provided a significant, meaningful service, or we may find that it helps to continue the isolation of non-English-speaking citizens from the rest to society. Either way, we will have the information available to make an informed decision—a better decision than we will make now.

I urge my colleagues to support my amendment.

I reserve the remainder of my time.

Mr. SYMMS. Will the Senator from Wyoming yield?

Mr. SIMPSON. Yes, I yield.

Mr. SYMMS. Are the yeas and nays ordered on final passage of this bill?

The PRESIDING OFFICER. They have not been ordered.

Mr. SYMMS. Mr. President, I ask for the yeas and nays on final passage.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. Who yields time?

Mr. SIMON. Mr. President, I yield myself 5 minutes.

The PRESIDING OFFICER. The Senator is recognized for 5 minutes.

Mr. SIMON. Mr. President, first I ask unanimous consent to add Senator MOYNIHAN as a cosponsor.

The PRESIDING OFFICER (Mr. WOFFORD). Without objection, it is so ordered.

Mr. SIMON. Mr. President, I hope this amendment will be rejected as it was in the committee by a 10 to 4 vote. We are not talking about something that is that complicated. We know that this works. And anyone who has any question, I just ask them to take a look at what happens in San Francisco where they have three languages on one ballot. Believe it or not, it is amazingly clear and not that difficult.

When my colleague from Wyoming—for whom I have great respect and who does this out of sincerity and who contributes in many areas where it frankly does not do him any good back home in Wyoming, the whole immigration matter for example—but when he says there is no evidence that bilingual ballots encourage participation, quite the contrary.

In the State of Illinois, where we have not had bilingual ballots, less than 50 percent of the Hispanics are registered. In the State of New Mexico, where you have bilingual ballots, 85 percent of the Hispanics are registered.

If this passes, then the dropping from 20,000 to 10,000 means 21 counties are eliminated, 3 counties around New York City with 53,000 Chinese-Americans—and I could go through these other counties.

The Civil Rights Commission testified before our subcommittee when we held the hearings in behalf of the 10,000 benchmark. There are, in fact, U.S. citizens who would be denied the right to vote if this were to pass. And I recall Senator HATCH's vigorous comments in opposition to this amendment when it came before the committee.

Who is the beneficiary? By and large, older Americans are the people who vote, the majority. And they are American Indians, native Americans.

Or, what about a young man, a Puerto Rican, who happens to grow up in New York City or Chicago, who speaks Spanish, barely speaks English? When we have a draft, we say to him: "You serve in the United States Armed Forces. You may have to shed your life for the freedom of this country." But we also say to that person: "Sorry, we cannot accommodate you with a bilingual ballot."

This assimilates people. My friend said we ought to be assimilating people. This does not divide people. It brings them into the process.

I think this amendment moves in the wrong direction. I hope it will be rejected.

Mr. President, I yield 5 minutes to the Senator from Massachusetts.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I join with the Senator from Illinois and urge our colleagues to reject this amendment.

Let us just put in proportion what this legislation is coming to grips with. There are 175 counties now that qualify with the 5-percent population. With a 10,000 threshold, we are only adding 34. We have 175 now. Even just with the 20,000, we are only adding 13. But that happens to cover 507,000 citizens. So it is a very small number that is actually being added, but it is clearly going to impact 507,000 of our fellow citizens; approximately 467,000 Hispanic voters and 40,000 Asian-American voters.

Now what has happened, Mr. President? We have heard a lot earlier this evening about when this help and assistance is available to Hispanic voters, do they really take advantage of it?

Well, section 203 took effect in 1976. Hispanic voter registration increased by 83 percent between 1976 and 1988 compared to an increase of only 21 percent among all voters. Latino representation in Texas, a State where bilingual coverage is most extensive, increased by 248 percent between 1973 and 1991.

Mr. President, we are talking about our fellow citizens. For all the reasons that were stated earlier in the general debate, I think the legislation itself is a very, very modest program to try and help and assist those populations which have been discriminated against in one form or another over the history of our country's laws. This is an opportunity to try and reach out, not as much as many of us would like to do, but to try and reach out in a very balanced and very modest way to encourage our fellow citizens to participate in the election system. And I hope the amendment of the Senator from Wyoming is defeated. I am glad to yield back the remainder of my time.

The PRESIDING OFFICER. Who yields time? The Senator from Wyoming.

Mr. SIMPSON. Mr. President, what is the situation with regard to the time?

The PRESIDING OFFICER. The Senator from Wyoming has 6 minutes and 30 seconds. The Senator from Illinois has 3½ minutes.

Mr. SIMPSON. Mr. President, I have been very intrigued by the full debate, not only on the bill but on the amendments. Not at this point with regard to the amendment, but earlier in the debate, the decibel level sometimes obscured the realities of what we are up to here.

Remember that in areas of minority populations at every polling place in the United States is someone to assist people. They are there to assist people in voting, saying: "Do you speak English?"

"No, I don't."

"Well, we can assist you. We have a person here who speaks. You can take material into the polling booth with you. Do you have something in your pocket that you could take with you?" And they do. They often do.

They can vote absentee. There are lots of things that people can do to accommodate themselves without having States and localities throughout the United States having a Federal mandate to print bilingual ballots and do it and pay for it themselves. That is the subject of the second amendment. And all of this on the basis of not one single shred of evidence as to what this does. Because after 17 years, you saw the charts, there is no difference in the percentage population participation in this—by this bilingual ballot.

Do not confuse this with the Voting Rights Act and the abolition of discrimination, which was superb and worked. And the participation there is awesome. It is not what we are talking about.

But there has not been anything presented to this Senator, neither the Census Bureau nor the GAO has produced a single shred of evidence. That is why my amendment requires a report on the program's effectiveness.

I can assure you of one thing. Studies by "the groups," in their self-serving interests, cannot be considered as evidence, and certainly are not considered here as reliable indicators. I have seen that from the beginning of my work with immigration and refugee matters where "the groups" have been presenting me stuff since 1980. Then you can get a Gallup poll, or a Roper poll, or any other kind, and it is absolutely opposite to what "the groups" are saying. They speak on what they say for "their people." It is not my quotation.

I have been there. And that is the purpose of this. What is the purpose of expansion? What is wrong with going to 20,000? Some of these jurisdictions are going to have 50—as I can see in some of this, counties that overlap, and Indian reservations. This is one of those typical examples of people saving a lot of stuff in the bottom drawer and pulling it all together and throwing it in a big pot whenever it gets to the bill that looks like this is a good place to ride it along. If you wanted just to extend it—I do not like the idea but do it. But you have not extended it. You have expanded it. And nobody yet has given us a reason why—not a soul.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. SIMON. Mr. President, I will not even use the full 3 minutes.

The reason for the 15-year extension is that this has been tried. It is working. It works well. The rest of the Voting Rights Act expires in 15 years. We extended it all to that time.

Second, when my friend—and he is my friend—from Wyoming says there is no proof that it has done any good—the Congressional Research Service is not one of "the groups," if I may use a phrase that my friend from Wyoming loves to use. The Congressional Research Service says, "Hispanic voter registration increased from 1976, when this first went into effect, to 1988, 83.4 percent." During the same time the population went up 21.3 percent.'

It works. We encourage participation. That is what a democracy is all about. I hope we reject this amendment resoundingly, as the Judiciary Committee did.

I yield back the remainder of my time.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. SIMPSON. Mr. President, I would enter into the RECORD the chart from the U.S. Census Bureau, showing exactly the figures on Hispanic registration, black registration, white registration. Perhaps I can put that to rest, with some actual figures that I think are quite reputable.

I just will conclude and say if bilingual ballots are offered, I have no doubt they will be used. The question I have—I know it is absurd—is are they needed? So far, 17 years' worth of experience have not shown us a shred of evidence that it did what it was supposed to do. That is where I come from on it. I am glad to be thoroughly educated, mystified, cajoled, whatever. I am ready.

The PRESIDING OFFICER. The Senator has 1 minute.

Mr. SIMPSON. I yield back the remainder of the time.

MORNING BUSINESS

Mr. SIMPSON. Mr. President, I ask unanimous consent to proceed in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

PERU UNDER SEIGE

Mr. PELL. Mr. President, I would like to draw attention to a recent piece in the Washington Post by Jeremy Stone, the president of the Federation of American Scientists, entitled "Save Peru From Sendero." As he points out, the Shining Path has successfully used terrorism and intimidation to demoralize the country. In the Maoist tradition, it refuses to negotiate, and is intent on destroying Peruvian institutions. Despite the limited number of guerillas, the Peruvian military has been unable to halt the Shining Path's expanding reign of terror. And, in the battle against the Shining Path, the military's efforts have been riddled with reports of human rights abuses.

The Shining Path is only one of Peru's difficulties—democratic institutions have been disbanded, drug trafficking continues unabated, a drought has crippled supplies of food, water and electricity, 80 percent of its 22 million citizens are under or unemployed, cor-

ruption is endemic, and inequities between whites and Indians create racial tensions. The many interwoven challenges facing Peru only weaken its ability to confront the Shining Path.

Because the situation in Peru is so desperate, it may well be that a Peruvian government will look to the international community for support. Dr. Stone's op-ed piece raises the question of whether the international community will, at that point, be ready with various options.

Fortunately, in the present post-cold war era, the United Nations is in a position to consider a wide variety of possibilities. Accordingly, it is incumbent upon international organizations, the Department of State, and other relevant organizations to begin thinking now about just such potential disasters, and calls for international help, from Peru and others.

Obviously, the United Nations has limited resources, and limited appetite, for intervening in the affairs of troubled countries, even if invited. Yet, there may well be ways that do not require large investments of money or military force in which these countries can be assisted, for interim periods at least, to administer themselves more efficiently while they pull themselves together or, as in the case of Cambodia, hold elections and organize constitutions.

I ask unanimous consent that the full text of the article be printed at this point in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

SAVE PERU FROM SENDERO

(By Jeremy J. Stone)

A determined, resilient and Machiavellian terrorist group, Sendero Luminoso, has advanced its revolution against demoralized Peru to the point where the international community is faced with a long-term emergency. This was dramatically confirmed by Sendero's unprecedented bombings in Lima this month.

Sendero is not just another Latin American revolutionary movement that will either be eventually defeated or with which one could eventually deal. Instead, it is a Maoist revolution based on Chinese political techniques that Sendero's leader learned during China's cultural revolution—techniques Sendero has improved on and which it modifies skillfully as circumstances change.

Insurgency specialists have continually underestimated Sendero for the last dozen years of its violent phase. Its Marxist indoctrination of young people, its extraordinary patience and its capacity for cruel Mafia-style intimidation make its defeat difficult.

Nor will it deal. It refuses all dialogue. Recently, it has begun a rapidly spreading phase of infiltration of popular organizations in urban shantytowns to complement its long-standing activities in rural areas. And last week it even began bombings in the neighborhoods of Lima's upper classes.

Some can hardly believe that a few thousand terrorists, no matter how disciplined, and even backed by many sympathizers, could take over a country of 22 million people.

But Sendero's intermediate goal is not to take over Peru but to destroy it by disrupting it. In today's world, this is not that hard. What happens, for example, when a repeatedly sabotaged electrical or water network moves from rationing to cutoffs?

And Peru, in decline for decades, is already a very sick country, with its government continually shrinking in disposable revenues, its major entrepreneurs poised to flee, its impoverished population exhausted, its bureaucrats and army corrupted and its capital city, comprising one-third of the population, easily harassed.

As part of its strategy, this movement intends to prove Peru into bloody repression that will, its spokesman say, "irrigate its revolution" and cost 1 million lives.

Rebuilding from razed ground, Sendero would then build a Maoist hermit kingdom, along the lines of an agrarian North Korea. Its reconstruction of Peru on the basis of a permanent cultural revolution can be expected to cost millions more lives, as Chairman Gonzalo, the self-proclaimed Fourth Sword of Marxism, tries to move the society backward in time—away from the outside world that already feeds one Peruvian in four.

The movement's vigilant contempt for the "revisionism" of all other Marxist states, including North Korea, and its isolation from any friendly states, would prevent the Sendero leaders for decades to come from permitting ideological relaxation. Peru could be a long time returning to civilization.

An alternative is that its revolutionary movement might prove too incompetent or too ideological to run a government. In this case, Peru could move toward complete collapse at enormous further cost, as did another similar Maoist offshoot of China's cultural revolution, Pol Pot's Cambodia.

These costs outweigh the human rights outrages of Peruvian society, as an atomic bomb outweighs a conventional bomb. And because Sendero deliberately seeks to provoke far worse military repression, it represents a major continuing threat to Peruvian democracy. Sendero successes also mean further losses in the drug war. Sendero sees drug sales as a kind of twofer: It gets the revenue, and its capitalist adversary in America has its moral fiber undermined by drugs.

Accordingly, none should argue that if Peruvian President Alberto Fujimori does not, or cannot, meet specific human rights or democratic standards, we should "write off" Peru.

Instead, a coalition of interests should seek to save Peru from Sendero. The international human rights community ought to be against what Assistant Secretary of State Bernard Aronson has called a "third holocaust" in our time, after that of Hitler and Pol Pot.

And all who love freedom should recognize that Sendero's Marxist ambitions of achieving world revolution, and its sophisticated methods for overwhelming the defense of a state's body politic, might make it a kind of political AIDS virus in more than a few unstable Third World states.

Saving Peru from Sendero is not something Peru can do by itself. Neither can the United States, by itself, make a decisive difference. Instead, Peru has become an international problem requiring some kind of collective international help from the community of states—much as the permanent five members of the United Nations undertook to save Cambodia. Whether and how this will be done we don't know.

VIOLENCE ON TELEVISION SENDS WRONG MESSAGE

Mr. PELL. Mr. President, I rise to share with my colleagues an excellent column written by the junior Senator from Illinois [Mr. SIMON]. It is an important and insightful review of the problem of violence on television.

The column highlights an article by Dr. Brandon S. Centerwall, of the department of psychiatry and behavioral sciences of the University of Washington, in the June issue of the Journal of the American Medical Association.

That article contains the shocking findings of a study by Dr. Centerwall which found that the murder rate among whites in several countries, including the United States, doubled 10 to 15 years after the introduction of television into a nation's culture.

"Long-term childhood exposure to television," Dr. Centerwall concluded, "is a causal factor behind approximately one-half of the homicides committed in the United States, or approximately 10,000 homicides annually."

As incredible as that claim may appear at first blush, we should all remember that those who provide television programs cannot have it both ways. Either television is an effective and highly persuasive medium, or the advertisers who underwrite the programming are wasting their money.

I commend this column, entitled "The TV Violence Act at its Mid-Point," to my colleagues and ask that it be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

THE TV VIOLENCE ACT AT ITS MID-POINT

(By Senator Paul Simon)

Children imitate what they see and hear. I see that in my two-year-old granddaughter.

Teenagers come up with weird haircuts they have seen and copied.

Adults also imitate, whether it is buying a car as a result of a TV commercial or a political leader making the same gestures as John F. Kennedy.

The older we are, the less likely we are to imitate what we see and hear, but to some extent, the pattern (of imitation) follows us through life.

That becomes significant because of television. Violence on entertainment television is absorbed and imitated—particularly by children—into our lives and into our culture.

Because numerous studies show this conclusively, six years ago I asked representatives from the television industry to voluntarily establish standards on violence. They told me they could not do that, working together as an industry, because of antitrust laws.

I pushed through Congress the TV Violence Act, a three-year exemption to the McCarran-Ferguson Antitrust Act, so the industry could get together and establish standards. That finally became law.

Two things have happened to make that law significant now: One is that we are at the half-way point in terms of the exemption. Second, The Journal of the American Medical Association has published a power-

ful new article underscoring how violence on television is adding to violence in our society.

We are at half time and I'm pleased to say the cable industry shows signs it may yet treat the subject seriously, though we have to wait for results. The television networks have met on the issue, and only time will tell if they will begin to regard this as anything more than a public relations problem with Congress.

Cable has hired one of the nation's experts, Professor George Gerbner of the University of Pennsylvania, to do a fairly in-depth look at the cable industry's products, and there is every indication they are serious although the study is not as wide-ranging as is desired.

In the past I've had little hope that we will get anything more than pious words from the networks. I hope I am wrong.

What underscores the importance of this is an article in the June issue of The Journal of the American Medical Association by Dr. Brandon S. Centerwall, of the Department of Psychiatry and Behavioral Sciences of the University of Washington.

His study of murder rates among whites in several countries, including the United States, shows that the murder rate doubled 10 to 15 years after the introduction of television into a nation's culture.

He concludes: "Long-term childhood exposure to television is a causal factor behind approximately one-half of the homicides committed in the United States, or approximately 10,000 homicides annually. . . If, hypothetically, television technology had never been developed, there would today be 10,000 fewer homicides each year in the United States, 70,000 fewer rapes and 700,000 fewer injurious assaults."

Those conclusions are so powerful they are hard to believe—just as it was hard to believe the harm that cigarettes cause when medical researchers first came out with those studies.

Suppose the article is 50 percent off target. That still suggests that by changing our television programming we could eventually prevent 5,000 murders a year, 35,000 rapes and 350,000 assaults.

Or let us assume the article is 90 percent wrong, only 10 percent accurate. That still means we could improve television and each year save 1,000 of those murdered and prevent 7,000 rapes and 70,000 assaults.

Our friends in the television industry have our lives—and their lives—in their hands as they mull over what to do. If they use the balance of this three-year period just to spin their wheels and do nothing, it is unlikely the public will sit back and do nothing.

An aroused public may ask for government censorship.

A much better answer is for the industry to agree voluntarily—that it is worth forgoing a few dollars in profits (violence on television makes money) to have a society that is less violent.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

UNANIMOUS CONSENT ON TREATIES

Mr. SIMON. Mr. President, I ask unanimous consent that the Senate proceed in executive session to consider the following matters:

Executive Calendar: 30. 1983 Partial Revision of the Radio Regulations (Geneva 1979) and a Final Protocol;

Executive Calendar: 31. Agreement for the Medium Frequency Broadcasting Service in Region 2;

Executive Calendar: 32. Regional Agreement on Broadcasting Service Expansion in the Western Hemisphere;

Executive Calendar: 33. International Telecommunications Regulations (Melborne 1988);

Executive Calendar: 34. Partial Revision (1988). Radio Regulations Relating to Space Radiocommunications Services;

Executive Calendar: 35. Partial Revision (1985). Radio Regulations Relating to Broadcasting-Satellite Service in Region 2; and

Executive Calendar: 36. Partial Revision of the Radio Regulations (Geneva 1979) Relating to Mobile Services.

I further ask unanimous consent that the treaties be considered as having been advanced through the various parliamentary stages up to and including the presentation of the resolutions of ratification, that no amendments, provisos, understandings or reservations be in order; that any statements appear, as if read, in the RECORD, and that the Senate vote, en bloc, on the resolutions of ratification without intervening action or debate with one vote to count as seven.

I ask for a division vote.

The PRESIDING OFFICER. All those in favor of the resolutions of ratification stand and be counted.

(After a pause.)

All those opposed to the resolutions of ratification stand and be counted.

Two-thirds of those voting, having voted in the affirmative, the resolutions and ratification are agreed to.

The resolutions of ratification considered and agreed to are as follows:

Resolved (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Partial Revision of the Radio Regulations (Geneva, 1979) of the International Telecommunication Union and a Final Protocol, signed on behalf of the United States at Geneva on March 18, 1983.

Resolved (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Regional Agreement for the Medium Frequency Broadcasting Service in Region 2, with Annexes, and a Final Protocol, signed on behalf of the United States at Rio de Janeiro on December 19, 1981.

Resolved (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Regional Agreement for the Use of the Band 1605–1705 kHz in Region 2, with Annexes, and Two U.S. Statements as contained in the Final Protocol, signed on behalf of the United States at Rio de Janeiro on June 8, 1988.

Resolved (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the International Telecommunication Regulations, with Appendices, signed at Melbourne on December 9, 1988, and a U.S. Statement, which includes a Reservation, as contained in the Final Protocol.

Resolved (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the 1988 Partial Revision of the Radio Regulations (Geneva, 1979) signed on behalf of the United States on October 6, 1988, and the U.S. Statement contained in the Final Protocol.

Resolved (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the 1988 Partial Revision of the Radio Regulations (Geneva, 1979) signed on behalf of the United States on October 6, 1988, and the U.S. Statement contained in the Final Protocol.

Resolved (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Partial Revision of the Regulations (Geneva, 1979) signed on behalf of the United States on September 15, 1985, and the U.S. Reservation and Statements as contained in the Final Protocol.

Resolved (two-thirds of the Senators present concurring therein), That the Senate advise the consent to the ratification of the Partial Revision of the Radio Regulations (Geneva, 1979) (Final Acts of the World Administrative Radio Conference for the Mobile Services (MOB–87) Geneva, 1987), signed on behalf of the United States on October 17, 1987, and the U.S. Reservations and Statement contained in the Final Protocol.

Mr. PELL. Mr. President, these are seven treaties of the International Telecommunication Union. These include the Partial Revision of the Radio Regulations (Geneva, 1979) of the International Telecommunication Union signed at Geneva on March 18, 1983, and transmitted on January 7, 1985, by President Reagan (Treaty Doc. 99–1); the Regional Agreement for the Medium Frequency Broadcasting Service (Rio de Janeiro, 1981) in Region 2, signed at Rio de Janeiro on December 19, 1981, and transmitted by President Reagan on June 26, 1987 (Treaty Doc. 100–7); the Regional Agreement for the Use of the Band 1605–1705 kHz in Region 2, signed at Rio de Janeiro on June 8, 1988, and transmitted by President Bush on July 30, 1991 (Treaty Doc. 102–10); the International Telecommunication Regulations signed at Melbourne on December 9, 1988, and transmitted by President Bush on September 11, 1991 (Treaty Doc. 102–13); the 1988 Partial Revision of the Radio Regulations (Geneva, 1979) signed at Geneva on October 6, 1988, and transmitted on April 2, 1992 (Treaty Doc. 102–27); the Partial Revision of the Radio Regulations (Geneva, 1979) signed at Geneva on September 15, 1985, and transmitted on April 2, 1992 by President Bush (Treaty Doc. 102–28); and the Partial Revision of the Radio Regulations (Geneva, 1979), signed at Geneva on October 17, 1987, and transmitted by President Bush on May 12, 1992 (Treaty Doc. 102–29).

The International Telecommunication Union is a specialized agency of the United Nations designed to promote cooperation among nations, allocate the radiofrequency spectrum, limit interference, develop telecommunication standards, and provide assistance to developing countries. These treaties are part of the ongoing

process among members of the ITU to coordinate usage of the radio spectrum and accommodate new technologies in radio and telecommunications. Most of these treaties before us today were signed several years ago and have been observed for some time.

The earliest of these agreements, the Regional Agreement for the Medium Frequency Broadcasting Service (Rio de Janeiro, 1981) in Region 2 (Treaty Doc. 100–7) establishes a plan of frequency assignments for AM radio and procedures designed to reduce station interference. Prior to this agreement, AM broadcasting was allocated on a domestic or subregional basis in region 2 of the ITU which consists of the Western Hemisphere. By the 1970's, countries were increasingly experiencing interference and there was interest in a new planning initiative to more efficiently allocate the medium frequency radio spectrum.

The plan lists 15,000 frequency assignments, of which 10,000 are operating AM radio broadcast stations and 5,000 are proposed additional stations. Approximately one-third of all assignments are for stations in the United States. It was originally intended that the plan would only consist of assignments that neither cause nor receive objectionable levels of interference. However, the conference members were unable to agree on all of the 15,000 assignments. As a result, the conference produced two lists: List A, which lists frequency assignments that neither receive nor produce objectionable levels of interference; and list B, which lists those stations where there is an objectionable level of interference. Approximately 90 percent of U.S. stations were on list A. The agreement calls for continued bilateral discussions to resolve incompatibilities on list B. Cuba is the only country neighboring the United States which is not a signatory to the Agreement.

The Regional Agreement for the Use of the Band 1605–1705 kHz in Region 2 (Treaty Doc. 102–10) establishes an allotment plan for extended AM broadcasting on the band 1605 to 1705 kHz in region 2. In response to demands to increase the number of AM radio assignments, 1979 World Administrative Radio Conference in Geneva recommended that a Regional Administrative Radio Conference be convened to establish a plan for AM radio in the frequency range 1605–1705 kHz. This represented a modest extension of the existing AM radio band. The United States will have priority use of the 10 new channels except within 330 kms of neighboring countries. The United States will negotiate bilateral agreements with Canada and Mexico to refine this treaty.

The band was traditionally used by fixed and mobile services, many of which had moved to other locations on the radio spectrum. The fixed and mobile stations that had been operating on the bands may either move above the 1705 kHz band or continue to use the band on a noninterference basis in those areas where they will not be affected by broadcasting.

The International Telecommunication Regulations—Treaty Document 102–13—establish general principles for providing and operating international telecommunication services offered to the public as well as underlying facilities. Since the regulations were last revised in 1973, technological advances in the telecommunications and information fields had dramatically changed all aspects of the telecommunications field, and ITU members wanted a new regulatory framework in light of the changes.

Much of the debate over this Agreement focused on the scope of the regulations. Some countries wanted the regulations to include all international telecommunication services except for a narrowly defined range of private users, whereas the United States contended that the regulations should only cover providers of public correspondence services. The Department of State believes the United States succeeded in negotiating "flexible and neutral regulations" despite several proposals from developing countries which would have broadened the scope of regulations and recommendations. The United States achieved its goal of expanding opportunities for users to lease international circuits from public networks. The regulations also state that members may allow companies or persons to enter into special arrangements to meet specialized international telecommunications needs rather than entering into bilateral agreements.

The United States issued one reservation, understanding, and declaration at the conference, which are incorporated in the Final Protocol submitted to the Senate. The United States declared that it will not accept the responsibility to enforce the domestic regulations of any other member within United States borders; does not endorse domestic procedures of other Members which require approval for providers seeking to do business outside the United States; does not accept the obligation to apply the reservations with respect to telecommunications between the United States, Canada, Mexico, Saint-Pierre Island, or Miquelon Island; and does not accept any obligation to apply the regulations to services other than public services. Further, the United States stated its understanding that all recommendations are voluntary and disassociated itself from a "conference opinion" which expressed some nations' concern that elements of the regulations would decrease their revenues.

The Partial Revision of the Radio Regulations (Treaty Doc. 102–28) allocates the frequency band 12.2–12.7 GHz to broadcasting-satellite services and 17.3–17.8 GHz to feeder links in region 2. The major goals of the Agreement were to devise a planning procedure for the use of broadcasting-satellite services and to establish planning principles, methods, and technical parameters regarding access to the geostationary orbit which would be agreed upon at the second conference. Although the United States felt that planning for broadcasting-satellite services was premature, region 2 needed an agreement to provide international recognition of its intent to use those bands for broadcasting-satellite services and obtain equity with the other regions who had already established plans for those services. According to the Department of State, the plan retains the procedural flexibility that the United States sought.

The United States entered a reservation regarding two technical issues, received power levels and polarization directions. The United States stated that characteristics designated in the plan place constraints on the development of advanced television services and reserves the right to use a higher received power level and either sense of polarization, indirect or direct. The United States also joined 22 other countries in a statement expressing that it does not recognize the assertion by Indonesia, Colombia, and Ecuador of sovereign rights over segments of the geostationary orbit.

The 1983 and 1987 Partial Revisions of the Radio Regulations (Treaty Docs. 99–1 and 102–29) address safety and distress systems. These two agreements revise the radio regulations by allocating frequencies for mobile-satellite services, radiodetermination-satellite services, maritime mobile services, and radionavigation services, adopting regional allocation provisions for terrestrial public correspondence with aircrafts and incorporating the Global Maritime Distress and Safety System being developed by the International Maritime Organization of the United Nations. Given vast changes in technology, the system revises distress communications on the high seas by replacing the traditional ship-to-ship system with one based more heavily on ship-to-shore and shore-to-ship communication and introduces new terrestrial and satellite technology. The United States also returned frequency allotments to China that had been available for U.S. Government stations.

The United States entered two reservations to the 1987 Final Protocol. The first relates to the restriction on the allocation of mobile satellite services and states the U.S. intention to use the bands in the most appropriate way to meet its requirements. The second states that the United States will not accept the obligation on passenger ships with more than 12 passengers to

carry maintenance personnel for distress and safety communications equipment. The United States also submitted a statement reserving its "* * * right to meet its radiocommunication requirements * * *" at the U.S. naval base at Guantanamo Bay.

One of the more contentious negotiations was over the 1988 Partial Revision of the Radio Regulations (Treaty Doc. 102-27) relating to the access to the geostationary satellite orbit and space services. Because the geostationary orbit has a limited number of orbital positions, developing countries wanted to guarantee access to orbital slots in the future. Since developing countries were far from needing or being able to access the orbit, the United States was concerned that planning for the use of the geostationary orbit would result in an inefficient allocation of resources. Conference members eventually agreed to a dual planning approach that allocates a certain portion of the radio spectrum to all nations under one plan and grandfathers existing and planned stations under another plan. The U.S. negotiators were satisfied with the compromise. According to the Department of State, the plan does not impose constraints on existing U.S. satellites nor unduly burden the coordination of future U.S. satellites.

The Agreement also added a new feature, multilateral planning meetings, for coordinating new satellite systems and made assignments for feeder links in regions 1 and 3. The United States joined 20 other countries in a statement which denies recognition of Colombia and Ecuador's claims of sovereign rights over portions of the geostationary orbit.

The committee held a hearing on these treaties on May 12, 1992. Testimony was received from Ambassador Bradley P. Holmes, U.S. Coordinator and Director of International Communications and Information Policy, Department of State. The committee is not aware of any opposition to the ratification of this treaty by the United States, and none of the treaties require implementing legislation.

These treaties were reported favorably by the Committee on Foreign Relations on June 11, 1992, by a vote of 18 to 0. Mr. President, I recommended that the Senate give its advice and consent to the ratification of these seven treaties.

Mr. SIMON. Mr. President, I ask unanimous consent that the motions to reconsider the vote be laid upon the table, en bloc; that the President be notified of the Senate's action; and that the Senate return to legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

BILL HELD AT THE DESK—SENATE JOINT RESOLUTION 330

Mr. SIMON. Mr. President, I ask unanimous consent that Senate Joint Resolution 330, introduced earlier today by Senators KENNEDY, HATCH and others, be held at the desk until close of business Wednesday, August 12.

The PRESIDING OFFICER. Without objection, it is so ordered.

IRISH-AMERICAN HERITAGE MONTH

Mr. KENNEDY. Mr. President, I am proud to join Senators HATCH, SIMON, MACK, ADAMS, BIDEN, COCHRAN, CRANSTON, D'AMATO, DANFORTH, DECONCINI, DIXON, DODD, DURENBERGER, GLENN, INOUYE, JEFFORDS, KASTEN, KERRY, LEVIN METZENBAUM, MIKULSKI, MITCHELL, MOYNIHAN, MURKOWSKI, PELL, STEVENS, THURMOND, WELLSTONE, and WOFFORD, in introducing a Senate Joint Resolution designating March 1993 as Irish-American Heritage Month.

An identical resolution House Joint Resolution 500, has been introduced by Representative THOMAS J. MANTON and 171 other sponsors in the House.

This measure is intended to honor the many significant contributions by the Irish to our country since the beginning of America. The Irish helped us win our freedom from Great Britain more than 200 years ago. In fact, Irish volunteers played such a dominant role in the Revolutionary Army that Lord Mountjoy lamented in the British Parliament that "We have lost America through the Irish."

During the Civil War, the Irish Brigade fought on the Union side with great distinction at Fredericksburg, Chancellorsville, Yorktown, Fair Oaks, Gaines Mill, Allen's Farm, Savage's Station, White Oak Bridge, Glendale, Malvern Hill, Antietam, Gettysburg, and Bristow Station. After the battle of Fredericksburg, Gen. Robert E. Lee, the leader of the Confederate forces, paid this tribute to the Irish Brigade on the opposing side:

> The gallant stand which this bold brigade made on the heights of Fredericksburg is well known. Never were men so brave. They ennobled their race by their splendid gallantry on that desperate occasion. Their brilliant though hopeless assaults on our lines excited the hearty applause of our officers and soldiers.

In the years since then, Irish immigrants have been involved in all aspects of our national life. They built our cities and canals, and the railroads that took America to the West, Even now, it is said, under every railroad tie, an Irishman is buried.

Today, more than 44 million Americans trace their ancestry to Ireland. Irish-Americans have made their mark in many fields—law and medicine, politics and government and the armed forces, business and labor, literature and music. Eugene O'Neill once said that the most important thing about himself and his work was that he was Irish.

Through perseverance and faith, humor and hard work, courage and patriotism, often against the odds, the Irish won acceptance for themselves and consequently for many other ethnic groups in the United States.

It is an honor to introduce this joint resolution today, and I look forward to early action on it by the Congress.

Mr. KERRY. Mr. President, I am pleased to be an original cosponsor of the joint resolution to designate March 1993 as "Irish-American Heritage Month." All over the United States, and especially in the Commonwealth of Massachusetts, Irish-American people continue the legacy of their forebears in contributing to the good of our country.

From the very beginning of this country's history, Irish-Americans have been at the center of the struggle to establish the United States as a beacon of freedom and fairness for the rest of the world. The Irish came to this land in search of freedom and have been heroic participants in the conflicts to protect that ideal.

The Irish are representative of this Republic's ideals. Be it our country's infrastructure, our cultural heritage, our legacy of dedicated public servants, all have benefited from the contributions of the sons and daughters of the "Auld Sod."

Irish-Americans have had to struggle to gain acceptance in the United States, but by means of their undying patriotism and dedication to hard work, they have earned the respect of all their fellow Americans.

"Irish-American Heritage Month" is a well deserved acknowledgment of the many contributions which these people have made to our country. I am proud to join in this occasion to honor them and those who came before.

Mr. PELL. Mr. President, I am delighted to join with Senator KENNEDY to cosponsor legislation designating an "Irish-American Heritage Month." Over the past several years, I have been privileged to introduce with Senator SIMON similar resolutions honoring the Irish-American community.

There is not one aspect of American life unenriched by the contributions of the Irish. History reveals that they have played a prominent role in the United States, from the American Revolution to the present day. Furthermore, their influence permeates the many facets of this Nation's culture and identity. In fact, the impact of Irish-American heritage has enabled the United States and Ireland to continue an enduring, amicable relationship.

This resolution would declare March 1993 "Irish-American Heritage Month." In doing so, it acknowledges and applauds the accomplishments of the Irish in our Nation. I am a proud cosponsor of this joint resolution, and I encourage my colleagues to support this legislation.

(At the request of Mr. DOLE, the following statement was printed in the RECORD.)

• Mr. HATCH. Mr. President, I am pleased to serve as an original cosponsor of a joint resolution that designates March 1993 as "Irish-American Heritage Month." It is clear that Irish-Americans have made important contributions to this country, and the purpose of introducing this resolution is to recognize the unique role that the Irish played in shaping our national identity.

Irish-Americans have distinguished themselves in government, law, military service, academia, and the arts. The noble works of Irish-American writers and poets are something in which all Americans can rejoice. However, I believe that the greatest contribution of Irish-Americans continues to be their unswerving commitment to family, hard work, and education. These values and principles guide Irish-Americans and explain precisely why this group has contributed so much to our country.

Mr. President, it is a pleasure to help introduce this joint resolution and I urge my colleagues to cosponsor this legislation.•

INDIAN TRIBAL COURTS ACT

Mr. SIMON. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of calendar No. 536, S. 1752 relating to Indian tribal courts.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 1752) to provide for the development, enhancement, and recognition of Indian tribal courts.

There being no objection, the Senate proceeded to consider the bill, which was reported from the Select Committee on Indian Affairs with an amendment to strike out all after the enacting clause and inserting in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Tribal Courts Act of 1992".

SEC. 2. DECLARATIONS AND FINDINGS.

Congress, after careful review of the United States historical and special legal relationship with and responsibilities to American Indian tribal governments, finds and declares that:

(1) The United States has a government-to-government relationship with each federally recognized tribal government.

(2) The United States has a trust responsibility to each tribal government that includes protection and enhancement of the sovereignty of each tribal government and the courts of each such government.

(3) Tribal governments exercise powers of self-government, requiring the enactment and enforcement of tribal laws and ordinances.

(4) An effective tribal judiciary is vital to the maintenance and enhancement of tribal sovereignty.

(5) The vindication of rights guaranteed by the Indian Civil Rights Act of 1968 (25 U.S.C. 1301 et seq.), and other Acts of Congress, within tribal forums can only be guaranteed by the provision of adequate resources to carry out the purposes and intent of such Acts.

(6) Resources are needed to update tribal legal codes, to address probation and detention needs, to assure a right to counsel as defined by tribal law, to increase tribal court access to legal authorities through computerized and other means, to train tribal court and tribal governmental personnel on court procedures and on the requirements of the Indian Civil Rights Act of 1968, to assure adequate compensation of tribal court judges and other court personnel, and to retain law clerks.

SEC. 3. PURPOSES.

Congress declares that this Act shall be implemented in accordance with the following Federal policy:

(1) The United States, as part of the exercise of its trust responsibility, shall assist tribal governments by strengthening tribal judicial systems and by promoting the recognition of tribal sovereignty and tribal court authority.

(2) The United States shall fund tribal courts at a level equivalent to State courts of general jurisdiction performing similar functions in the same or comparable geographic region.

(3) Federal funding to tribal courts shall be administered in a manner that encourages flexibility and innovation by tribal judicial systems and that avoids encroaching on tribal traditions that may be manifested in tribal judicial systems.

(4) Federal funding shall be available to provide support to intertribal appellate court systems.

(5) The United States shall provide funding for tribal judicial systems in a manner that will minimize Federal and administrative costs.

(6) The Congress encourages the mutual recognition by tribal, State, and Federal courts of the public acts, records, and proceedings of each other's courts.

(7) The Congress shall protect the diversity of tribal court systems and encourage each tribal government to determine the best system for the tribal government's particular needs.

SEC. 4. DEFINITIONS.

As used in this Act:

(1) The term "Indian tribe" means any Indian tribe, band, nation, pueblo, or other organized group or community, which is recognized as eligible for the special programs and services provided by the United States to Indian tribes because of their status as Indians. Such term includes any Alaska Native governmental entity.

(2) The term "intertribal appellate court" means a judicial system that is established by two or more tribes to hear matters on appeal from tribal courts and includes regional tribal appellate court systems.

(3) The term "tribal court" means the entire judicial system of a tribal government, including all tribal lower courts, appellate courts, and circuit rider systems, established by inherent tribal authority, and traditional dispute resolution forums.

(4) The term "tribal court personnel" means tribal court, tribal appellate court, and tribal supreme court judges, officers of the court, administrative personnel, dispute resolution facilitators, bailiffs, clerks, probation officers, and others who work for or primarily with tribal courts.

(5) The term "tribal government" means the government of an Indian tribe.

(6) The term "Conference" means the Judicial Conference that is established by Indian tribal governments to carry out the purposes of this Act and recognized by the United States under section 101 of this Act.

(7) The term "Indian country" means Indian country as defined in section 1151 of title 18, United States Code.

SEC. 5. DISCLAIMER.

Nothing in this Act shall be construed to—

(1) encroach upon or diminish in any way the inherent sovereign authority of each tribal government to determine the role of the tribal court within the tribal government or to enact and enforce tribal laws;

(2) diminish in any way the authority of tribal governments to appoint personnel;

(3) impair the rights of each tribal government to determine the nature of its own legal system or the apportionment of authority within the tribal government;

(4) alter in any way any traditional dispute resolution forum;

(5) imply that any tribal court is an instrumentality of the United States; or

(6) diminish the trust responsibility of the United States to Indian tribal governments and tribal court systems of such governments.

TITLE I—JUDICIAL CONFERENCE

SEC. 101. RECOGNITION OF CONFERENCE.

(a) JUDICIAL CONFERENCE.—The Congress, on behalf of the United States and in accordance with the provisions of subsection (b) of this section, shall recognize a nationally based Tribal Judicial Conference organized by the governments of federally recognized Indian tribes for the following purposes—

(1) the administration of funds appropriated for the support and maintenance of the Conference;

(2) the administration of contracts and grants for the enhancement of tribal courts; and

(3) the conduct of such activities, including the establishment of advisory and other committees as, in the opinion of the Conference, are necessary and appropriate for the enhancement of tribal courts, intertribal appellate courts, and regional judicial conferences. Such activities may include, but are not limited to—

(A) the conduct of a continuous study of the operation of tribal courts and making available to such courts recommended rules of practice and procedures for the promotion of procedural uniformity within each court system, fairness in administration, the just determination of litigation, and the elimination of unnecessary expense and delay;

(B) the development, in consultation with tribal governments, of a formula for the distribution of funds to tribal governments in accordance with section 106 of this title;

(C) the determination, in consultation with tribal governments, of information that will be required to be submitted annually by the tribal courts and intertribal appellate courts for the purpose of maintaining current information for formula funding analysis;

(D) the determination of other support needed under section 108(a)(10) of this title;

(E) the submission of an annual report to the Congress on information obtained pursuant to sections 4 and 7 of this title and section 202;

(F) the submission of annual estimates to the Office of Management and Budget and to the Congress, on the amounts needed to maintain and operate tribal courts, intertribal appellate courts, and the Conference; and

(G) the conduct of the Survey of Tribal Court Needs required by section 201 of this Act and the appointment of three members to the survey team pursuant to section 202 of this Act.

(b) CONGRESSIONAL RECOGNITION.—A nationally based Tribal Judicial Conference that is or-

ganized by the governments of federally recognized Indian tribes may petition the Congress for recognition by the United States for the purposes described in subsection (a) of this section. Such petition may be made by letter and shall be submitted to the Congress. The petitioning organization shall be deemed recognized at the end of the 60-day period following receipt of the petition by the Congress unless a joint resolution signifying disapproval of the petitioning organization is introduced and approved during that 60-day period, in accordance with title III. Such resolution must contain specific reasons for disapproval including information that the petitioning organization is not nationally based or that the membership of the petitioning organization is not open to all federally recognized Indian tribes. If such resolution is approved by the Congress within 60 calendar days following introduction, the petition shall fail. If such resolution fails to pass the Congress within 60 days following introduction, the petition shall be deemed approved.

(c) NO RESTRICTION ON LIMITATION ON POWERS OF CONFERENCE.—Nothing in this Act shall be deemed to restrict or limit the powers that may be vested in the Conference by the participating tribal governments.

(d) INHERENT TRIBAL GOVERNMENTAL AUTHORITY.—The Conference recognized by the United States pursuant to this Act shall be deemed to be organized under the inherent governmental authority of each participating tribal government.

SEC. 102. COMMITTEES.

The Conference may establish committees, including, but not limited to, committees on automation, personnel, practice and procedures, court-appointed counsel services, probation and sentencing, salaries and benefits, codes of conduct, and court administration and case management.

SEC. 103. ASSISTANCE FROM ADMINISTRATIVE OFFICE OF UNITED STATES COURTS.

At the request of the Conference recognized by the United States pursuant to this Act, the Administrative Office of the United States Courts shall provide technical and other assistance to the Conference, on a reimbursable basis.

SEC. 104. INFORMATION.

The Conference shall secure from the tribal courts and intertribal appellate courts information on the status of the dockets of the courts, information on the courts' need for assistance to enhance the administration of justice, and such other data as may be needed to assist the development of such courts.

SEC. 105. REGULATIONS.

After consultation with tribal governments, the Conference may make, promulgate, issue, rescind, and amend rules and regulations as may be necessary to carry out the functions, powers, and authority of the Conference and shall publish in the Federal Register such rules, regulations, and notices as the conference determines to be of public interest.

SEC. 106. FORMULA; GRANTS.

(a) ESTABLISHMENT.—A formula for funding tribal courts and intertribal appellate courts shall be established by the Conference after full and complete consultation with tribal governments and after notice and publication in the Federal Register, incorporating the findings of the survey authorized in section 201. A minimum base funding level shall be established for each tribal court, and the balance of funds shall be distributed to tribal governments for such tribal courts and intertribal appellate courts by means of the formula. The factors that may be considered in developing such formula include, but are not limited to—

(1) Indian and non-Indian population served by the tribal court in Indian country;

(2) tribal court civil and criminal caseload, including Indian Child Welfare Act of 1978 (25 U.S.C. 1901 et seq.) caseload;

(3) projected caseloads based on requirements of Federal law;

(4) social and professional support services, including interpreters;

(5) tribal authorization for court-appointed counsel;

(6) facilities needs, including shelters, detention, rehabilitation or protective facilities; and

(7) location of reservation, including distances from detention, probation, and treatment facilities.

The manner in which a tribal government organizes its judicial function shall not be considered as a factor in any formula developed under this subsection or under any other provision of this Act.

(b) DISTRIBUTION.—In accordance with the formula established pursuant to subsection (a), the Bureau of Indian Affairs shall distribute to tribal governments, for the use of tribal courts and intertribal appellate courts, the funds appropriated pursuant to section 109(a)(1) of this title. Nothing in this Act shall be construed as prohibiting any tribal government from providing other support, from whatever source, to its tribal courts. In no case shall the amount retained by the Bureau of Indian Affairs from the funds appropriated under 109(a)(1) of this title for administrative functions authorized by this section exceed $250,000 in any fiscal year.

(c) APPEALS PROCEDURES.—Any tribal government aggrieved by the formula established pursuant to subsection (a) of this section, or any subsequent amendments or adjustments to such formula, may appeal to the Board of Hearings and Appeals, United States Department of the Interior, but only on questions of law and only if the issue was raised and fully considered by the Conference prior to the filing of the appeal.

SEC. 107. REPORTS.

Each tribal court and intertribal appellate court that receives funding through its tribal government under section 109(a)(1) of this title shall report annually to its tribal government and to the Conference such information as the conference may deem necessary to assure the adequacy of funding to meet the needs of tribal courts, including information gathered pursuant to section 104.

SEC. 108. GRANTS FOR TRAINING, AUTOMATION, CODE DEVELOPMENT, RECORD-KEEPING.

(a) GRANTS.—From amounts appropriated pursuant to section 109(a)(2) of this title, the Conference shall provide funding to tribal governments, tribal consortia, and national Indian organizations, for the following purposes:

(1) training of judges and other court personnel;

(2) procurement (by lease, purchase, exchange, transfer, or otherwise) of automatic data processing equipment, and training of tribal court personnel in the management, coordination, operation, and use of automatic data processing equipment in tribal courts;

(3) development of standards of conduct for court practitioners;

(4) development of tribal court rules;

(5) development of personnel standards for judges, advocates, court-appointed counsel, and other legal practitioners, and for other court personnel;

(6) development of court-appointed counsel services;

(7) development of probation and pretrial services;

(8) development of court accounting procedures;

(9) development of tribal and regional appellate systems; and

(10) such other support for the development and maintenance of tribal courts that the Conference may deem appropriate, including the development of a nationwide tribal court reporting system, and recommendations for funding for facilities construction, improvement, or repair.

(b) METHOD OF FUNDING.—The Conference may provide such funding on the basis of a formula established by the Conference, or in such amounts as the Conference determines appropriate. Such funding may be provided by grants, including competitive grants. Any formula established by the Conference pursuant to this subsection shall be established in consultation with the participating tribal governments.

(c) PROHIBITION.—Funding provided under this section may not be used to offset the funding provided for the operation of tribal courts and intertribal appellate courts under section 106, or any other Federal sources of funding to support such courts.

(d) STANDARDS.—No standards developed under such funding may be imposed on any tribal court except by the tribal government. Tribal governments may impose standards which assure fiscal control and recordkeeping.

SEC. 109. AUTHORIZATION OF APPROPRIATIONS.

(a) APPROPRIATIONS.—(1) For purposes of carrying out the provisions of section 106, there are authorized to be appropriated $50,000,000 for fiscal year 1994, and such sums as may be necessary for each succeeding fiscal year.

(2) For purposes of carrying out the provisions of section 108, there are authorized to be appropriated $5,000,000 for fiscal year 1994, and such sums as may be necessary for each succeeding fiscal year.

(3) For purposes of supporting the Conference, there are authorized to be appropriated $2,500,000 for fiscal year 1994, and such sums as may be necessary for each succeeding fiscal year.

(b) CONGRESSIONAL BUDGET ACT OF 1974.—The authorization of appropriations provided for by subsection (a) is established only with respect to appropriations made from the allocation under section 602(b) of the Congressional Budget Act of 1974—

(1) for the Subcommittee on Commerce, Justice, State, and Judiciary of the Committee on Appropriations of the House of Representatives; and

(2) for the Subcommittee on Commerce, Justice, State, and Judiciary of the Committee on Appropriations of the Senate.

SEC. 110. SINGLE AUDIT ACT OF 1984.

Funding provided pursuant to this title shall be subject to the applicable provisions of the Single Audit Act of 1984.

SEC. 111. ELIGIBILITY.

Nothing in this Act shall affect the eligibility of a tribal government to receive funding through the Indian priority system of the Bureau of Indian Affairs for support of the tribe's court system.

TITLE II—SURVEY OF TRIBAL COURT NEEDS

SEC. 201. SURVEY.

(a) TRIBAL COURT NEEDS.—Within 180 days following the date on which a Tribal Judicial Conference is recognized by the United States in accordance with title I of this Act, a comprehensive survey shall be conducted in accordance with subsection (b), of the needs of each tribal court that is eligible for services through the Bureau of Indian Affairs. Such survey shall include a comparison of current funding of each tribal court surveyed with State and local courts of comparable jurisdiction, in the same geographic area, and with similar actual and potential caseloads. The survey may include but is not limited to the following factors:

(1) the amount of base funding required to support the operation of the tribal judicial system of each tribal government, including the

funding needed to adequately enforce Federal laws, including the Indian Civil Rights Act of 1968; and

(2) the amount of base funding required to support the operation of intertribal or regional appellate judicial systems.

(b) TRIBAL COURT SURVEY TEAM.—The survey required in subsection (a) shall be conducted by the Tribal Court Survey Team, under the direction of the Conference, and in consultation with tribal governments.

SEC. 202. TRIBAL COURT SURVEY TEAM.

(a) COMPOSITION.—The Tribal Court Survey Team shall consist of—

(1) three members appointed by the Conference;

(2) three members appointed by the Director of the National Center for State Courts; and

(3) three members appointed by the Director of the Administrative Office of the United States Courts.

(b) PERSONNEL.—The Tribal Court Survey Team may employ, on a temporary basis, such personnel as are required to carry out the provisions of section 201(a).

(c) FINDINGS.—The Tribal Court Survey Team shall submit its findings to—

(1) the Conference;

(2) the Secretary of the Interior;

(3) the Chairman of the Committee on Interior and Insular Affairs of the House of Representatives;

(4) the Chairman of the Select Committee on Indian Affairs of the Senate;

(5) the Chairman of the Subcommittee on Commerce, Justice, State, and Judiciary of the Committee on Appropriations of the House of Representatives;

(6) the Chairman of the Subcommittee on Commerce, Justice, State, and Judiciary of the Committee on Appropriations of the Senate;

(7) the Director of the National Center for State Courts; and

(8) the Director of the Administrative Office of the United States Courts.

SEC. 203. APPROPRIATIONS.

For purposes of carrying out the provisions of section 201—

(1) there are authorized to be appropriated such sums as may be necessary; and

(2) the authorization of appropriations under paragraph (1) is established only with respect to appropriations made from the allocation under section 602(b) of the Congressional Budget Act of 1974—

(A) for the Subcommittee on Commerce, Justice, State and Judiciary of the Committee on Appropriations of the House of Representatives; and

(B) for the Subcommittee on Commerce, Justice, State and Judiciary of the Committee on Appropriations of the Senate.

TITLE III—EXPEDITED PROCEDURE FOR RESOLUTION OF DISAPPROVAL

SEC. 301. EXPEDITED PROCEDURE.

(a) CONTENTS OF RESOLUTION.—For the purposes of section 101(b), "joint resolution" means only a joint resolution introduced after the date on which Congress receives a petition in accordance with section 101(b) the matter after the resolving clause of which is as follows: "The Congress disapproves the petitioning organization for the following reason or reasons: (Reasons to be inserted here).".

(b) REFERRAL TO COMMITTEE.—A resolution described in subsection (a) introduced in the House of Representatives shall be referred to the Committee on Interior and Insular Affairs of the House of Representatives. A resolution described in subsection (a) introduced in the Senate shall be referred to the Select Committee on Indian Affairs of the Senate. Such a resolution may not be reported before the 8th day after its introduction.

(c) DISCHARGE OF COMMITTEE.—If the committee to which is referred a resolution described in subsection (a) has not reported such resolution (or an identical resolution) at the end of 15 calendar days after its introduction or at the end of the first day after there has been reported to the House involved a joint resolution disapproving the petition as described in section 101(b), whichever is earlier, such committee shall be deemed to be discharged from further consideration of such resolution and such resolution shall be placed on the appropriate calendar of the House involved.

(d) FLOOR CONSIDERATION.—

(1) IN GENERAL.—When the committee to which a resolution is referred has reported, or has been deemed to be discharged (under subsection (c)) from further consideration of, a resolution described in subsection (a), it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) for any Member of the respective House to move to proceed to the consideration of the resolution, and all points of order against the resolution (and against consideration of the resolution) are waived. The motion is highly privileged in the House of Representatives and is privileged in the Senate and is not debatable. The motion is not subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the resolution shall remain the unfinished business of the respective House until disposed of.

(2) DEBATE.—Debate on the resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the resolution. A motion further to limit debate is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the resolution is not in order. A motion to reconsider the vote by which the resolution is agreed to or disagreed to is not in order.

(3) VOTE ON FINAL PASSAGE.—Immediately following the conclusion of the debate on a resolution described in subsection (a), and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the appropriate House, the vote on final passage of the resolution shall occur.

(4) RULINGS OF THE CHAIR ON PROCEDURE.—Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution described in subsection (a) shall be decided without debate.

(e) COORDINATION WITH ACTION BY OTHER HOUSE.—If, before the passage by one House of a resolution of that House described in subsection (a), that House receives from the other House a resolution described in subsection (a), then the following procedures shall apply:

(1) The resolution of the other House shall not be referred to a committee.

(2) With respect to a resolution described in subsection (a) of the House receiving the resolution—

(A) the procedure in that House shall be the same as if no resolution had been received from the other House; but

(B) the vote on final passage shall be on the resolution of the other House.

(f) RULES OF HOUSE OF REPRESENTATIVES AND SENATE.—This subsection is enacted by Congress—

(1) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a resolution described in subsection (a), and it supersedes other rules only to the extent that it is inconsistent with such rules; and

(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.

AMENDMENT NO. 2912

(Purpose: To provide for a study of the impact on Federal and tribal courts of Federal court review of final orders of tribal courts)

Mr. SIMPSON. Mr. President, on behalf of Senator GORTON, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Wyoming [Mr. SIMPSON], for Mr. GORTON, proposes an amendment numbered 2912.

Mr. SIMPSON. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the bill, add the following new title:

TITLE IV—STUDY OF TRIBAL/FEDERAL COURT REVIEW

SEC. 401. STUDY.

(a) TRIBAL/FEDERAL COURT REVIEW.—A comprehensive study shall be conducted in accordance with subsection (b), of the treatment by tribal courts of matters arising under the Indian Civil Rights Act (25 U.S.C. 1301 et seq.) and of other Federal laws for which tribal courts have jurisdictional authority and regulations promulgated by Federal agencies pursuant to the Indian Civil Rights Act and other Acts of Congress. The study shall include an analysis of those Indian Civil Rights Act cases that were the subject of Federal court review from 1968 to 1978 and the burden, if any, on tribal governments, tribal courts, and Federal courts of such review. The study shall address the circumstances under which Federal court review of actions arising under the Indian Civil Rights Act may be appropriate or warranted.

(b) TRIBAL/FEDERAL COURT REVIEW STUDY PANEL.—The study required in subsection (a) shall be conducted by the Tribal/Federal Court Review Study Panel in consultation with tribal governments.

SEC. 402. TRIBAL/FEDERAL COURT REVIEW STUDY PANEL.

(a) COMPOSITION.—The Tribal/Federal Court Review Study Panel shall consist of—

(1) four representatives of tribal governments, including tribal court judges, two of whom shall be appointed by the Speaker of the House of Representatives and two of whom shall be appointed by the President pro tempore of the Senate; and

(2) four members of the United States Court of Appeals courts who shall be appointed by the Director of the Administrative Office of the United States Courts.

(b) PERSONNEL.—The Tribal/Federal Court Review Study Panel may employ, on a tem-

porary basis, such personnel as are required to carry out the provisions of this title.

(c) FINDINGS.—The Tribal/Federal Court Review Study Panel, not later than the expiration of the 12-month period following the date on which moneys are made available to carry out this title, shall submit its findings and recommendations to—

(1) the Congress;

(2) the Tribal Judicial Conference; and

(3) the director of the Administrative Office of the United States Courts.

(d) TERMINATION.—Not later than 30 days after the Panel has submitted its findings and recommendations under subsection (c), the Panel shall cease to exist.

SEC. 403. APPROPRIATIONS.

For purposes of carrying out the provisions of this title there are authorized to be appropriated such sums as may be necessary.

SEC. 404. PROHIBITION ON GRANTS.

Notwithstanding any other provision of this Act, no grants shall be made by the Conference under this Act after the expiration of the 18-month period following the date of the enactment of this Act, unless the Tribal/Federal Court Review Study Panel has submitted its findings and recommendations to the Congress in accordance with subsection (c) of section 402 and a period of 60 days has expired following the submission of such findings and recommendations.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 2912) was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

Mr. SIMON. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar 576, H.R. 4004; that all after the enacting clause be stricken; that the text of S. 1752, as amended, be inserted in lieu thereof; that the bill be deemed read the third time and passed; and that the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

So the bill (H.R. 4004) as amended, was deemed read the third time and passed; as follows:

Resolved, That the bill from the House of Representatives (H.R. 4004) entitled "An Act to assist in the development of tribal judicial systems, and for other purposes", do pass with the following amendment:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Tribal Courts Act of 1992".

SEC. 2. DECLARATIONS AND FINDINGS.

Congress, after careful review of the United States historical and special legal relationship with and responsibilities to American Indian tribal governments, finds and declares that:

(1) The United States has a government-to-government relationship with each federally recognized tribal government.

(2) The United States has a trust responsibility to each tribal government that includes protection and enhancement of the sovereignty of each tribal government and the courts of each such government.

(3) Tribal governments exercise powers of self-government, requiring the enactment and enforcement of tribal laws and ordinances.

(4) An effective tribal judiciary is vital to the maintenance and enhancement of tribal sovereignty.

(5) The vindication of rights guaranteed by the Indian Civil Rights Act of 1968 (25 U.S.C. 1301 et seq.), and other Acts of Congress, within tribal forums can only be guaranteed by the provision of adequate resources to carry out the purposes and intent of such Acts.

(6) Resources are needed to update tribal legal codes, to address probation and detention needs, to assure a right to counsel as defined by tribal law, to increase tribal court access to legal authorities through computerized and other means, to train tribal court and tribal governmental personnel on court procedures and on the requirements of the Indian Civil Rights Act of 1968, to assure adequate compensation of tribal court judges and other court personnel, and to retain law clerks.

SEC. 3. PURPOSES.

Congress declares that this Act shall be implemented in accordance with the following Federal policy:

(1) The United States, as part of the exercise of its trust responsibility, shall assist tribal governments by strengthening tribal judicial systems and by promoting the recognition of tribal sovereignty and tribal court authority.

(2) The United States shall fund tribal courts at a level equivalent to State courts of general jurisdiction performing similar functions in the same or comparable geographic region.

(3) Federal funding to tribal courts shall be administered in a manner that encourages flexibility and innovation by tribal judicial systems and that avoids encroaching on tribal traditions that may be manifested in tribal judicial systems.

(4) Federal funding shall be available to provide support to intertribal appellate court systems.

(5) The United States shall provide funding for tribal judicial systems in a manner that will minimize Federal and administrative costs.

(6) The Congress encourages the mutual recognition by tribal, State, and Federal courts of the public acts, records, and proceedings of each other's courts.

(7) The Congress shall protect the diversity of tribal court systems and encourage each tribal government to determine the best system for the tribal government's particular needs.

SEC. 4. DEFINITIONS.

As used in this Act:

(1) The term "Indian tribe" means any Indian tribe, band, nation, pueblo, or other organized group or community, which is recognized as eligible for the special programs and services provided by the United States to Indian tribes because of their status as Indians. Such term includes any Alaska Native governmental entity.

(2) The term "intertribal appellate court" means a judicial system that is established by two or more tribes to hear matters on appeal from tribal courts and includes regional tribal appellate court systems.

(3) The term "tribal court" means the entire judicial system of a tribal government, including all tribal lower courts, appellate courts, and circuit rider systems, established by inherent tribal authority, and traditional dispute resolution forums.

(4) The term "tribal court personnel" means tribal court, tribal appellate court, and tribal supreme court judges, officers of the court, administrative personnel, dispute resolution facilitators, bailiffs, clerks, probation officers, and others who work for or primarily with tribal courts.

(5) The term "tribal government" means the government of an Indian tribe.

(6) The term "Conference" means the Judicial Conference that is established by Indian tribal governments to carry out the purposes of this Act and recognized by the United States under section 101 of this Act.

(7) The term "Indian country" means Indian country as defined in section 1151 of title 18, United States Code.

SEC. 5. DISCLAIMER.

Nothing in this Act shall be construed to—

(1) encroach upon or diminish in any way the inherent sovereign authority of each tribal government to determine the role of the tribal court within the tribal government or to enact and enforce tribal laws;

(2) diminish in any way the authority of tribal governments to appoint personnel;

(3) impair the rights of each tribal government to determine the nature of its own legal system or the apportionment of authority within the tribal government;

(4) alter in any way any traditional dispute resolution forum;

(5) imply that any tribal court is an instrumentality of the United States; or

(6) diminish the trust responsibility of the United States to Indian tribal governments and tribal court systems of such governments.

TITLE I—JUDICIAL CONFERENCE

SEC. 101. RECOGNITION OF CONFERENCE.

(a) JUDICIAL CONFERENCE.—The Congress, on behalf of the United States and in accordance with the provisions of subsection (b) of this section, shall recognize a nationally based Tribal Judicial Conference organized by the governments of federally recognized Indian tribes for the following purposes—

(1) the administration of funds appropriated for the support and maintenance of the Conference;

(2) the administration of contracts and grants for the enhancement of tribal courts; and

(3) the conduct of such activities, including the establishment of advisory and other committees as, in the opinion of the Conference, are necessary and appropriate for the enhancement of tribal courts, intertribal appellate courts, and regional judicial conferences. Such activities may include, but are not limited to—

(A) the conduct of a continuous study of the operation of tribal courts and making available to such courts recommended rules of practice and procedures for the promotion of procedural uniformity within each court system, fairness in administration, the just determination of litigation, and the elimination of unnecessary expense and delay;

(B) the development, in consultation with tribal governments, of a formula for the distribution of funds to tribal governments in accordance with section 106 of this title;

(C) the determination, in consultation with tribal governments, of information that will be required to be submitted annually by the tribal courts and intertribal appellate courts for the purpose of maintaining current information for formula funding analysis;

(D) the determination of other support needed under section 108(a)(10) of this title;

(E) the submission of an annual report to the Congress on information obtained pursuant to sections 4 and 7 of this title and section 202;

(F) the submission of annual estimates to the Office of Management and Budget and to the

Congress, on the amounts needed to maintain and operate tribal courts, intertribal appellate courts, and the Conference; and

(G) the conduct of the Survey of Tribal Court Needs required by section 201 of this Act and the appointment of three members to the survey team pursuant to section 202 of this Act.

(b) CONGRESSIONAL RECOGNITION.—A nationally based Tribal Judicial Conference that is organized by the governments of federally recognized Indian tribes may petition the Congress for recognition by the United States for the purposes described in subsection (a) of this section. Such petition may be made by letter and shall be submitted to the Congress. The petitioning organization shall be deemed recognized at the end of the 60-day period following receipt of the petition by the Congress unless a joint resolution signifying disapproval of the petitioning organization is introduced and approved during that 60-day period, in accordance with title III. Such resolution must contain specific reasons for disapproval including information that the petitioning organization is not nationally based or that the membership of the petitioning organization is not open to all federally recognized Indian tribes. If such resolution is approved by the Congress within 60 calendar days following introduction, the petition shall fail. If such resolution fails to pass the Congress within 60 days following introduction, the petition shall be deemed approved.

(c) NO RESTRICTION ON LIMITATION ON POWERS OF CONFERENCE.—Nothing in this Act shall be deemed to restrict or limit the powers that may be vested in the Conference by the participating tribal governments.

(d) INHERENT TRIBAL GOVERNMENTAL AUTHORITY.—The Conference recognized by the United States pursuant to this Act shall be deemed to be organized under the inherent governmental authority of each participating tribal government.

SEC. 102. COMMITTEES.

The Conference may establish committees, including, but not limited to, committees on automation, personnel, practice and procedures, court-appointed counsel services, probation and sentencing, salaries and benefits, codes of conduct, and court administration and case management.

SEC. 103. ASSISTANCE FROM ADMINISTRATIVE OFFICE OF UNITED STATES COURTS.

At the request of the Conference recognized by the United States pursuant to this Act, the Administrative Office of the United States Courts shall provide technical and other assistance to the Conference, on a reimbursable basis.

SEC. 104. INFORMATION.

The Conference shall secure from the tribal courts and intertribal appellate courts information on the status of the dockets of the courts, information on the courts' need for assistance to enhance the administration of justice, and such other data as may be needed to assist the development of such courts.

SEC. 105. REGULATIONS.

After consultation with tribal governments, the Conference may make, promulgate, issue, rescind, and amend rules and regulations as may be necessary to carry out the functions, powers, and authority of the Conference and shall publish in the Federal Register such rules, regulations, and notices as the conference determines to be of public interest.

SEC. 106. FORMULA; GRANTS.

(a) ESTABLISHMENT.—A formula for funding tribal courts and intertribal appellate courts shall be established by the Conference after full and complete consultation with tribal governments and after notice and publication in the Federal Register, incorporating the findings of the survey authorized in section 201. A minimum base funding level shall be established for each tribal court, and the balance of funds shall be distributed to tribal governments for such tribal courts and intertribal appellate courts by means of the formula. The factors that may be considered in developing such formula include, but are not limited to—

(1) Indian and non-Indian population served by the tribal court in Indian country;

(2) tribal court civil and criminal caseload, including Indian Child Welfare Act of 1978 (25 U.S.C. 1901 et seq.) caseload;

(3) projected caseloads based on requirements of Federal law;

(4) social and professional support services, including interpreters;

(5) tribal authorization for court-appointed counsel;

(6) facilities needs, including shelters, detention, rehabilitation or protective facilities; and

(7) location of reservation, including distances from detention, probation, and treatment facilities.

The manner in which a tribal government organizes its judicial function shall not be considered as a factor in any formula developed under this subsection or under any other provision of this Act.

(b) DISTRIBUTION.—In accordance with the formula established pursuant to subsection (a), the Bureau of Indian Affairs shall distribute to tribal governments, for the use of tribal courts and intertribal appellate courts, the funds appropriated pursuant to section 109(a)(1) of this title. Nothing in this Act shall be construed as prohibiting any tribal government from providing other support, from whatever source, to its tribal courts. In no case shall the amount retained by the Bureau of Indian Affairs from the funds appropriated under 109(a)(1) of this title for administrative functions authorized by this section exceed $250,000 in any fiscal year.

(c) APPEALS PROCEDURES.—Any tribal government aggrieved by the formula established pursuant to subsection (a) of this section, or any subsequent amendments or adjustments to such formula, may appeal to the Board of Hearings and Appeals, United States Department of the Interior, but only on questions of law and only if the issue was raised and fully considered by the Conference prior to the filing of the appeal.

SEC. 107. REPORTS.

Each tribal court and intertribal appellate court that receives funding through its tribal government under section 109(a)(1) of this title shall report annually to its tribal government and to the Conference such information as the conference may deem necessary to assure the adequacy of funding to meet the needs of tribal courts, including information gathered pursuant to section 104.

SEC. 108. GRANTS FOR TRAINING, AUTOMATION, CODE DEVELOPMENT, RECORDKEEPING.

(a) GRANTS.—From amounts appropriated pursuant to section 109(a)(2) of this title, the Conference shall provide funding to tribal governments, tribal consortia, and national Indian organizations, for the following purposes:

(1) training of judges and other court personnel;

(2) procurement (by lease, purchase, exchange, transfer, or otherwise) of automatic data processing equipment, and training of tribal court personnel in the management, coordination, operation, and use of automatic data processing equipment in tribal courts;

(3) development of standards of conduct for court practitioners;

(4) development of tribal court rules;

(5) development of personnel standards for judges, advocates, court-appointed counsel, and other legal practitioners, and for other court personnel;

(6) development of court-appointed counsel services;

(7) development of probation and pretrial services;

(8) development of court accounting procedures;

(9) development of tribal and regional appellate systems; and

(10) such other support for the development and maintenance of tribal courts that the Conference may deem appropriate, including the development of a nationwide tribal court reporting system, and recommendations for funding for facilities construction, improvement, or repair.

(b) METHOD OF FUNDING.—The Conference may provide such funding on the basis of a formula established by the Conference, or in such amounts as the Conference determines appropriate. Such funding may be provided by grants, including competitive grants. Any formula established by the Conference pursuant to this subsection shall be established in consultation with the participating tribal governments.

(c) PROHIBITION.—Funding provided under this section may not be used to offset the funding provided for the operation of tribal courts and intertribal appellate courts under section 106, or any other Federal sources of funding to support such courts.

(d) STANDARDS.—No standards developed under such funding may be imposed on any tribal court except by the tribal government. Tribal governments may impose standards which assure fiscal control and recordkeeping.

SEC. 109. AUTHORIZATION OF APPROPRIATIONS.

(a) APPROPRIATIONS.—(1) For purposes of carrying out the provisions of section 106, there are authorized to be appropriated $50,000,000 for fiscal year 1994, and such sums as may be necessary for each succeeding fiscal year.

(2) For purposes of carrying out the provisions of section 108, there are authorized to be appropriated $5,000,000 for fiscal year 1994, and such sums as may be necessary for each succeeding fiscal year.

(3) For purposes of supporting the Conference, there are authorized to be appropriated $2,500,000 for fiscal year 1994, and such sums as may be necessary for each succeeding fiscal year.

(b) CONGRESSIONAL BUDGET ACT OF 1974.—The authorization of appropriations provided for by subsection (a) is established only with respect to appropriations made from the allocation under section 602(b) of the Congressional Budget Act of 1974—

(1) for the Subcommittee on Commerce, Justice, State, and Judiciary of the Committee on Appropriations of the House of Representatives; and

(2) for the Subcommittee on Commerce, Justice, State, and Judiciary of the Committee on Appropriations of the Senate.

SEC. 110. SINGLE AUDIT ACT OF 1984.

Funding provided pursuant to this title shall be subject to the applicable provisions of the Single Audit Act of 1984.

SEC. 111. ELIGIBILITY.

Nothing in this Act shall affect the eligibility of a tribal government to receive funding through the Indian priority system of the Bureau of Indian Affairs for support of the tribe's court system.

TITLE II—SURVEY OF TRIBAL COURT NEEDS

SEC. 201. SURVEY.

(a) TRIBAL COURT NEEDS.—Within 180 days following the date on which a Tribal Judicial Conference is recognized by the United States in accordance with title I of this Act, a comprehensive survey shall be conducted in accordance with subsection (b), of the needs of each tribal court that is eligible for services through the

Bureau of Indian Affairs. Such survey shall include a comparison of current funding of each tribal court surveyed with State and local courts of comparable jurisdiction, in the same geographic area, and with similar actual and potential caseloads. The survey may include but is not limited to the following factors:

(1) the amount of base funding required to support the operation of the tribal judicial system of each tribal government, including the funding needed to adequately enforce Federal laws, including the Indian Civil Rights Act of 1968; and

(2) the amount of base funding required to support the operation of intertribal or regional appellate judicial systems.

(b) TRIBAL COURT SURVEY TEAM.—The survey required in subsection (a) shall be conducted by the Tribal Court Survey Team, under the direction of the Conference, and in consultation with tribal governments.

SEC. 202. TRIBAL COURT SURVEY TEAM.

(a) COMPOSITION.—The Tribal Court Survey Team shall consist of—

(1) three members appointed by the Conference;

(2) three members appointed by the Director of the National Center for State Courts; and

(3) three members appointed by the Director of the Administrative Office of the United States Courts.

(b) PERSONNEL.—The Tribal Court Survey Team may employ, on a temporary basis, such personnel as are required to carry out the provisions of section 201(a).

(c) FINDINGS.—The Tribal Court Survey Team shall submit its findings to—

(1) the Conference;

(2) the Secretary of the Interior;

(3) the Chairman of the Committee on Interior and Insular Affairs of the House of Representatives;

(4) the Chairman of the Select Committee on Indian Affairs of the Senate;

(5) the Chairman of the Subcommittee on Commerce, Justice, State, and Judiciary of the Committee on Appropriations of the House of Representatives;

(6) the Chairman of the Subcommittee on Commerce, Justice, State, and Judiciary of the Committee on Appropriations of the Senate;

(7) the Director of the National Center for State Courts; and

(8) the Director of the Administrative Office of the United States Courts.

SEC. 203. APPROPRIATIONS.

For purposes of carrying out the provisions of section 201—

(1) there are authorized to be appropriated such sums as may be necessary; and

(2) the authorization of appropriations under paragraph (1) is established only with respect to appropriations made from the allocation under section 602(b) of the Congressional Budget Act of 1974—

(A) for the Subcommittee on Commerce, Justice, State and Judiciary of the Committee on Appropriations of the House of Representatives; and

(B) for the Subcommittee on Commerce, Justice, State and Judiciary of the Committee on Appropriations of the Senate.

TITLE III—EXPEDITED PROCEDURE FOR RESOLUTION OF DISAPPROVAL

SEC. 301. EXPEDITED PROCEDURE.

(a) CONTENTS OF RESOLUTION.—For the purposes of section 101(b), "joint resolution" means only a joint resolution introduced after the date on which Congress receives a petition in accordance with section 101(b) the matter after the resolving clause of which is as follows: "The Congress disapproves the petitioning organization for the following reason or reasons: (Reasons to be inserted here).".

(b) REFERRAL TO COMMITTEE.—A resolution described in subsection (a) introduced in the House of Representatives shall be referred to the Committee on Interior and Insular Affairs of the House of Representatives. A resolution described in subsection (a) introduced in the Senate shall be referred to the Select Committee on Indian Affairs of the Senate. Such a resolution may not be reported before the 8th day after its introduction.

(c) DISCHARGE OF COMMITTEE.—If the committee to which is referred a resolution described in subsection (a) has not reported such resolution (or an identical resolution) at the end of 15 calendar days after its introduction or at the end of the first day after there has been reported to the House involved a joint resolution disapproving the petition as described in section 101(b), whichever is earlier, such committee shall be deemed to be discharged from further consideration of such resolution and such resolution shall be placed on the appropriate calendar of the House involved.

(d) FLOOR CONSIDERATION.—

(1) IN GENERAL.—When the committee to which a resolution is referred has reported, or has been deemed to be discharged (under subsection (c)) from further consideration of, a resolution described in subsection (a), it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) for any Member of the respective House to move to proceed to the consideration of the resolution, and all points of order against the resolution (and against consideration of the resolution) are waived. The motion is highly privileged in the House of Representatives and is privileged in the Senate and is not debatable. The motion is not subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the resolution shall remain the unfinished business of the respective House until disposed of.

(2) DEBATE.—Debate on the resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the resolution. A motion further to limit debate is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the resolution is not in order. A motion to reconsider the vote by which the resolution is agreed to or disagreed to is not in order.

(3) VOTE ON FINAL PASSAGE.—Immediately following the conclusion of the debate on a resolution described in subsection (a), and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the appropriate House, the vote on final passage of the resolution shall occur.

(4) RULINGS OF THE CHAIR ON PROCEDURE.—Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution described in subsection (a) shall be decided without debate.

(e) COORDINATION WITH ACTION BY OTHER HOUSE.—If, before the passage by one House of a resolution of that House described in subsection (a), that House receives from the other House a resolution described in subsection (a), then the following procedures shall apply:

(1) The resolution of the other House shall not be referred to a committee.

(2) With respect to a resolution described in subsection (a) of the House receiving the resolution—

(A) the procedure in that House shall be the same as if no resolution had been received from the other House; but

(B) the vote on final passage shall be on the resolution of the other House.

(f) RULES OF HOUSE OF REPRESENTATIVES AND SENATE.—This subsection is enacted by Congress—

(1) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a resolution described in subsection (a), and it supersedes other rules only to the extent that it is inconsistent with such rules; and

(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.

TITLE IV—STUDY OF TRIBAL/FEDERAL COURT REVIEW

SEC. 401. STUDY.

(a) TRIBAL/FEDERAL COURT REVIEW.—A comprehensive study shall be conducted in accordance with subsection (b), of the treatment by tribal courts of matters arising under the Indian Civil Rights Act (25 U.S.C. 1301 et seq.) and of other Federal laws for which tribal courts have jurisdictional authority and regulations promulgated by Federal agencies pursuant to the Indian Civil Rights Act and other Acts of Congress. The study shall include an analysis of those Indian Civil Rights Act cases that were the subject of Federal court review from 1968 to 1978 and the burden, if any, on tribal governments, tribal courts, and Federal courts of such review. The study shall address the circumstances under which Federal court review of actions arising under the Indian Civil Rights Act may be appropriate or warranted.

(b) TRIBAL/FEDERAL COURT REVIEW STUDY PANEL.—The study required in subsection (a) shall be conducted by the Tribal/Federal Court Review Study Panel in consultation with tribal governments.

SEC. 402. TRIBAL/FEDERAL COURT REVIEW STUDY PANEL.

(a) COMPOSITION.—The Tribal/Federal Court Review Study Panel shall consist of—

(1) four representatives of tribal governments, including tribal court judges, two of whom shall be appointed by the Speaker of the House of Representatives and two of whom shall be appointed by the President pro tempore of the Senate; and

(2) four members of the United States Court of Appeals courts who shall be appointed by the Director of the Administrative Office of the United States Courts.

(b) PERSONNEL.—The Tribal/Federal Court Review Study Panel may employ, on a temporary basis, such personnel as are required to carry out the provisions of this title.

(c) FINDINGS.—The Tribal/Federal Court Review Study Panel, not later than the expiration of the 12-month period following the date on which moneys are made available to carry out this title, shall submit its findings and recommendations to—

(1) the Congress;

(2) the Tribal Judicial Conference; and

(3) the Director of the Administrative Office of the United States Courts.

(d) TERMINATION.—Not later than 30 days after the Panel has submitted its findings and recommendations under subsection (c), the Panel shall cease to exist.

SEC. 403. APPROPRIATIONS.

For purposes of carrying out the provisions of this title there are authorized to be appropriated such sums as may be necessary.

SEC. 404. PROHIBITION ON GRANTS.

Notwithstanding any other provision of this Act, no grants shall be made by the Conference under this Act after the expiration of the 18-month period following the date of the enactment of this Act, unless the Tribal/Federal Court Review Study Panel has submitted its findings and recommendations to the Congress in accordance with subsection (c) of section 402 and a period of 60 days has expired following the submission of such findings and recommendations.

Mr. SIMON. Mr. President, I ask unanimous consent that calendar 536 be indefinitely postponed.

The PRESIDING OFFICER. Without objection, it is so ordered.

SMALL BUSINESS CREDIT CRUNCH RELIEF ACT OF 1992

Mr. SIMON. I ask unanimous consent, Mr. President, that the Committee on Small Business be discharged from further consideration of H.R. 4111, the Small Business Credit Crunch Relief Act of 1992, and that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 4111) to provide additional loan assistance to small businesses, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 2913

Mr. SIMON. Mr. President, on behalf of Senators BUMPERS and KASTEN, I send a substitute amendment to the desk.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Illinois [Mr. SIMON], for Mr. BUMPERS for himself and Mr. KASTEN, proposes an amendment numbered 2913.

(The text of the amendment is printed in today's RECORD under "Amendments Submitted.")

Mr. BUMPERS. The amendment which I have submitted is essentially a Small Business Committee substitute which I offer on behalf of myself and Senator KASTEN, our committee's ranking member. This bill, which passed the House on May 14, intends to remedy the severe lack of available long-term credit for small businesses by increasing the authorization for the Small Business Administration's section 7(a) loan guaranty program. While this is the primary purpose of the bill, my amendment also contains provisions affecting two other important SBA programs which I will discuss later.

H.R. 4111 as passed by the House provides for an increase in the 7(a) loan program authorization from $3.85 billion in fiscal year 1992 to $5.0 billion, with additional increases to $6.0 billion in 1993 and $7.0 billion in fiscal 1994. Senator KASTEN and I have concluded that even these increases are inadequate to meet small business credit needs for the remainder of this year, and we are proposing raising the House numbers to $5.2 billion in 1992, $6.2 billion in 1993 and $7.2 billion in 1994. Our colleague from Florida, Senator MACK, believes even these increases are not enough and would like to increase these authorizations substantially higher.

As Members of the Senate by now know, the SBA 7(a) loan program has faced a virtual run in the last year. Demand for the SBA guaranty program by borrowers and banks has increased at least 30 percent over 1991 in virtually every corner of the Nation, and some areas have incurred much higher increases. Concord, NH, for example, has seen its SBA loan volume go up by 160 percent, Hartford, CT, up 87 percent; Philadelphia, PA, up 136 percent; Dallas, TX, up 54.2 percent; and Denver, CO, up 61.9 percent. Although a variety of factors are at work here, the prolonged recession and the so-called credit crunch have conspired to push many small businesses toward the 7(a) program who have not needed the program in the past. This trend has been greatest in New England where the administration announced a pilot program in February to help meet the demand brought about by the collapse of many of the region's banks.

In late March, Congress approved the administration's request to reprogram authority from unused SBIC debenture guarantees to the Section 7(a) program and the Section 504 Development Company Program. Because of the very low subsidy rates which apply to these two programs, this additional authority translated into $500 million in new 7(a) loans and $200 million in section 504 loans. Unhappily, this amount has proved not nearly enough, and the section 7(a) program will shut down for the remainder of 1992 in a matter of a few short weeks without passage of this legislation.

H.R. 4111, Mr. President, is consistent with the administration's pending proposals, although I would be quick to say that the Bush administration has done very little to get its proposals into law. The Appropriations Committees received in late February an administration request for $1.1 billion in additional 7(a) loan guaranty authority. This figure was in addition to the $500 million reprogramming for 7(a).

The White House proposed to fund this increase—which only required $53 million in outlays—by corresponding reductions in Federal programs which provide housing subsidies for the poor, in public broadcasting facilities grants, and in nurses' training grants. These proposals came from OMB, and they have gotten a cool reception to say the least. Other Members of the Senate and I made clear from the outset that no such reductions would be enacted, although it does not take a rocket scientist to figure that matter out.

Supplemental funding was approved by Congress and signed by the President, but without the proposed offsets.

The 7(a) lending program, incidentally, has just received a ringing endorsement from one of the Nation's premier public accounting firms. On June 2, 1992, our Senate Small Business Committee took testimony on a study of the 7(a) program which was commissioned by SBA and performed by Price Waterhouse. This report is based on a proposal which I made in the Appropriations Committee several years ago, which was adopted, that an objective study be undertaken to determine the real costs and benefits of SBA guaranteed lending. Senators may recall that David Stockman and Ronald Reagan argued that SBA borrowers were economic straphangers who made little real contribution to the economy.

During the entire Reagan administration and most of the Bush administration, the study mandated by the Appropriations Committee got nowhere because the administration was not interested in knowing the facts. Administrator Patricia Saiki deserves some credit for having carried out that direction and for the excellent job done by Price Waterhouse.

While the report is both detailed and lengthy, the headline is that SBA borrowers—and this is a study of an actual group of real businesses who borrowed in 1985—paid more taxes back to the Federal Government in 1 year than their loans cost to make, administer, and service including defaults, over the entire lifetime of those loans. The Government received a return of 22.7 percent on its investment through 1989. SBA borrowers, Price Waterhouse found, were more profitable, had larger sales increases and hired more new employees than did a control group of nonborrowers.

Mr. President, let me emphasize that this bill will not solve the SBA lending problem, but that the bill is nontheless necessary to the resolution. Presently, with the $500 million reprogramming mentioned earlier, SBA has more apporpriations than it has authorization for the 7(a) program. H.R. 4111 will correct that problem by raising the authorization substantially, but it will not provide the needed guaranty authority, which must come through the Appropriations Committee.

MICROLENDING PROGRAM

As I alluded to earlier, there are two additional programs included in the Bumpers-Kasten amendment. First, we are proposing several amendments to the SBA Microlending Program which was enacted last year and has proved extremely popular. Mrs. Saiki recently told our committee that Microloans

was one of the most sought-after SBA programs in history. I am personally convinced that it offers an opportunity to lift thousands of Americans out of the cycle of poverty and into the economic mainstream.

Under this new program, SBA will make direct loans to nonprofit community organizations for the purpose of relending in so-called microloans to very small business borrowers. The maximum loan will be $25,000, but most loans will be much smaller since the average loan for intermediaries must be under $10,000. Additionally, the intermediary organization will receive a grant from SBA equal to 20 percent of the loan amount for the purpose of providing intensive management training and technical assistance to their borrowers, most of whom will probably have very little business experience.

This is a bold experiment, Mr. President. What we are testing is whether the American dream can really be made to work for a vast array of people who have had essentially no access to capital. We are hoping to put hundreds, perhaps thousands, of Americans into business for themselves who probably have always considered this goal far beyond their reach. But they will have to start small, and there is no free lunch. These loans are not highly subsidized, and they are expected to be paid back both by the individual borrower and by the community organization. Many of the intermediaries which our committee has studied have utilized various models of peer-group lending in which borrowers spend time with each other discussing their problems and plans.

The Microloan Program as drafted last year contained what has proven to be a defect with respect to interest rates charged to the intermediary community organizations and the spread which they might earn above that cost of money through loans to borrowers. Our amendment will resolve that problem by allowing SBA to buy down the interest rate charged to borrowers to bring it more in line with Congress' original expectations, and also giving them a slightly higher margin vis-a-vis their borrowers.

Further, my amendment focuses the Microlending Program more specifically toward those areas of the country which are most in need and which are feeling the most economic pain, such as the Mississippi Delta Region. My own preference would be to focus exclusively on rural poverty and unemployment, because I believe strongly that rural needs tend to get short-changed. In political reality, however, there is equal distress in the inner cities, as the horror of Los Angeles recently demonstrated.

The substitute amendment will provide slightly greater incentives for microlenders in areas of chronically high unemployment known as labor surplus areas and also in those countries, municipalities and census tracts where the poverty rate exceeds 20 percent. In addition to inner cities, this includes a large part of the Mississippi Delta which has long been the object of my legislative efforts. It also includes several other blighted areas, such as the Lower Rio Grande Valley and large areas of New Mexico and South Dakota which have large Native American populations. This bill will not end suffering in the Delta, but it will offer the hope of economic sufficiency to hundreds of families who do not have access to capital needed to start a business.

The pending amendment will give both an interest rate buy-down and a slight increase in the amount of training grants available to microlending intermediaries located in these areas. The amendment will also permit SBA to use 3 percent of its appropriated loan fund to provide technical assistance to the intermediaries by contracting with experienced microlending organizations. The technical assistance providers will help SBA ensure that the intermediaries have the knowledge, skills and understanding of microlending practices to operate successfully.

Finally, this amendment expands the class of entities which may apply to serve as microlending intermediaries. Senator KASTEN's and my original intent in drafting this program was for SBA to utilize private, nonprofit community organizations as lending intermediaries. Our decision was based on the fact that the most successful microlending programs in the country, based on hearings in our committee, were of this type, and we remain convinced that, in most areas, private nonprofits should be the primary delivery vehicle for the Microlending Program. Additionally, our intent was and remains that the Microlending Program not be used as a subsidy or source of funds for any governmental entity, such as a State or city economic development department.

While we remain committed to the private, nonprofit sector for microlending, it has been brought to our attention that some areas of the Nation are underserved or not served at all by such organizations, although these areas may have other economic development organizations with experience and desire to participate in the program. In Arkansas, for example, although SBA funded an outstanding Microlending Program in the southern part of the State, no private nonprofit organization came forward in either northwest or northeast Arkansas seeking microloan funds. There are, however, well-established and competent planning and development districts across our State. I do not know whether any of these groups would like to apply for the program, but I believe they should be allowed the opportunity.

The primary examples of suitable applicants among the new eligible applicants are planning and development districts. The PDD's, which have a public or quasi-public status, have a long and successful history of economic development efforts through EDA, SBA, and other programs, and some have experience in making and servicing very small loans. In other regions, SBA may find that its own certified development companies can be suitable intermediaries for microlending.

We want to emphasize, however, the mandatory nature of the intensive training and technical assistance which must be provided to microloan borrowers by the intermediary. Any organization seeking to enter the program must be ready, willing, and able to provide this help to its borrowers and prospective borrowers, and it should be aware of the congressional intent that microlending should open doors to disadvantaged people who have not had access to traditional sources of business finance. This is not a program for successful, established small businesses who can go to their banker for a loan or who can participate in the SBA Guaranteed Loan Program.

SMALL BUSINESS COMPETITIVENESS PROGRAM

The third major provision of this bill, Mr. President, is a 3-year extension of the highly successful Small Business Competitiveness Demonstration Program which was enacted in 1988 as title II of Public Law 100-656. This program, which was authored principally by my distinguished colleague from Illinois, Senator DIXON, seems to have been immensely successful in resolving many long-standing complaints about so-called small business set-asides in certain industries. Before this program's enactment, Members of Congress were besieged with grievances from both large and small businesses that Federal procurement in certain areas such as construction and architecture and engineering services tended to rely almost exclusively on small business set-asides. Almost every year for several years, 80 percent or more of Federal contracting opportunities in the construction area would be reserved for small business, leaving larger businesses with virtually no Federal market in many parts of the country.

Moreover, agencies had developed an unhealthy habit of meeting their small business contracting goals by relying on the easy hits by simply reserving all certain kinds of contracts for small business. This method of operation meant that small business could always rely on getting to paint the barracks, for example, but had little chance to get experience outside painting. It made for an easy life for contracting officers who did not have to worry about finding new kinds of procurements in which small firms might want to compete but might not yet be fully competitive with big business.

The fact is, Mr. President, that small business is fully competitive with large business today in a host of areas. Quite often, a small firm can provide the same or better services or products to the government for less money than can large businesses because small firms tend to have lower overhead and are more efficient.

Hence, in Public Law 100–656, Congress agreed to suspend the long-standing protection for small firms known as the set-aside—which I must emphasize is a fully competitive procurement which is simply limited to small business participants—we agreed to suspend this set-aside in certain areas and under carefully monitored conditions.

The Competitiveness Demonstration Program established a floor of 40 percent participation for small firms under free and open competition which in most cases the small firms have had no difficulty in obtaining. In the event that the 40 percent threshold is not met, set-asides can be reintroduced in order to fulfill the mandate of the Small Business Act of 1953 that small companies are entitled to their fair share of Federal contracting.

Senator DIXON has chaired a subcommittee hearing in the Small Business Committee to conduct oversight of this program, and the results have been extremely positive. An extension of the program, which will expire October 1 if Congress does not act, seems both warranted and is broadly supported.

Incidentally, I have reason to believe that our colleagues in the House will agree to this extension as well as to the other amendments which Senator KASTEN and I are proposing to H.R. 4111, and that the bill will be sent to the President for his approval.

I ask that a section-by-section analysis of the bill be included as well as the text of the bill as amended be printed in the RECORD at the conclusion of my remarks. That analysis, which I believe is fully supported by Senator KASTEN as well, together with my statement will serve the purpose of a committee report which time did not permit drafting under the short deadline before funding for the 7(a) program expires. I urge my colleagues to support H.R. 4111 as amended.

I ask unanimous consent that a section-by-section analysis be printed in the RECORD.

There being no objection, the section-by-section analysis was ordered to be printed in the RECORD, as follows:

SMALL BUSINESS CREDIT AND BUSINESS OPPORTUNITY ENHANCEMENT ACT OF 1992—SECTION-BY-SECTION ANALYSIS

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

Subsection (a) of this section establishes the short title of the Act as the "Small Business Credit and Business Opportunity Enhancement Act of 1992".

Subsection (b) lists the provisions of the Act in the form of a table of contents.

TITLE I—IMPROVED ACCESS TO CREDIT

Subtitle A—Section 7(a) Guaranteed Loan Program

SEC. 101. SHORT TITLE.

This section establishes the short title of the subtitle as the "Small Business Credit Crunch Relief Act of 1992".

SEC. 102. AUTHORIZATIONS.

This section amends the Small Business Administration's (SBA) guaranteed loan authorization levels for fiscal years 1992–1994 from $5 billion, $6 billion and $7 billion, to $5.2 billion, $6.2 billion and $7.2 billion, respectively. This increased level of authorization is required for fiscal year 1992 to accommodate the $500 million that SBA reprogrammed, with Congressional approval, from the Small Business Investment Company Program, and the $1.45 billion appropriated by Congress to the program in the Dire Emergency Supplemental Appropriations Act (Pub. L. 102–302), which was enacted on June 22, 1992.

This section also limits the amount which SBA may spend annually on each "special or pilot" project in the financing area to 10 percent of the total appropriation. This provision is intended to ensure that the overall SBA loan programs are not drained in order to serve the purposes of any one special or pilot project.

SEC. 103. BUY AMERICAN PREFERENCE.

Section 103 retains the House-passed provision which requires SBA, when practicable, to give a preference in the consideration of loan applications to small businesses which use or purchase equipment and supplies that are produced in the United States.

SEC. 104. STATE LIMITATIONS ON INTEREST RATES.

Section 104 authorizes SBA to establish nationwide interest rates which will supersede State usury laws for SBA's 7(a) guaranteed loan program. This provision brings the 7(a) guaranteed loan program in parity with other Federally guaranteed financing programs, such as those offered by the Farmers Home Administration (38 U.S.C. 3720A) and the Department of Veterans Affairs (12 U.S.C. 1335).

Subtitle B—Microloan Demonstration Program Amendments

SEC. 111. SHORT TITLE.

This section establishes the short title of the subtitle as the "**Microlending Expansion Act of 1992**".

SEC. 112. FINDINGS.

This section sets forth Congressional findings with respect to the Microloan Demonstration Program. Congress finds that there are many individuals, including those presently unemployed or employed at low-income jobs, who have talents and skills which could enable them to become self-employed. These individuals usually lack access to credit and capital, have little or no savings, and a poor or nonexistent credit history. Women, minorities and individuals residing in areas of high unemployment or low income frequently face particular difficulty in obtaining credit or capital.

Congress also finds that providing individuals with small-scale, short-term loans and intensive marketing, management and technical assistance could allow them the access to the capital and credit needed to start their own businesses and to improve their standard of living. Banking institutions are reluctant to provide such financial assistance because of the high administrative costs associated with processing and servicing small loans and because of their lack of experience in providing the type of intensive technical assistance needed by such borrowers.

Congress finds that many organizations throughout the nation have experience providing the financial and technical assistance needed to operate successful microlending programs. Congress also finds that making direct loans and grants from the Federal government to such organizations for the purpose of making microloans is an appropriate method of providing entrepreneurs and small businesses with access to credit and capital in small amounts. Congress recognizes, however, that in some areas, providing grant funds for technical assistance and a Federal guarantee on microloans offered by intermediaries is a successful alternative for providing access to credit and capital to those small businesses which need it.

SEC. 113. MICROLOAN DEMONSTRATION PROGRAM AMENDMENTS.

The following amendments were made necessary by three changes that occurred after the October 1991 enactment of Public Law 102–140, which established the Microloan Demonstration Program. First, the worsening national economy caused a sharper reduction in the prime (interest) rate than in the Treasury's interest rates. This, in turn, created problems for the microlending intermediaries who fund their administrative costs with the "spread" between their cost of money and the rate at which they make microloans. Second, the Dire Emergency Supplemental Appropriations Act (Pub. L. 102–302) provided an additional $4 million for microloan technical assistance grants and $5 million in subsidy dollars for microloans, which buys an additional $29 million in microloans at current subsidy rates. Finally, the Committee desired to target microloans and the associated technical assistance to areas of high unemployment and low income throughout the nation.

To accommodate the changed circumstances and to provide added incentives for intermediaries to make loans of $5,000 or less, this section amends subsection 7(m) of the Small Business Act to establish three tiers of microloan program participation. For intermediaries in Tier 1, the interest rate is decreased from the original rate by one-half of 1 percent for intermediary borrowings, and intermediaries are permitted to make the loans at 7 percentage points above their cost of money in their first year of program participation and at 7 percentage points above their average cost of money in the second and later years of program participation. Tier 1 maintains the requirements of current law with respect to technical assistance grants.

Tier 2 requires that intermediaries "predominantly serve" areas of high unemployment or low income, that is, provide to such areas at least half of the loans and half of the dollars lent under the microloan program. Section 113 defines "areas of high unemployment" as labor surplus areas, as defined by the Department of Labor. The Department of Labor publishes a list of the labor surplus areas annually in "Area Trends in Employment and Unemployment," a compilation which is updated monthly.

"Low income areas" are defined in this section as "counties," "parishes," "census tracts" or "block numbering areas within central cities of metropolitan areas" in which 20 percent or more of the individuals have annual incomes below the poverty level, as determined by the most recently available census data. The Committee recognizes that the most recently available data

on the census tract and block numbering area level are from the 1980 Census. The Committee expects that the Administration will not delay its loan award process to wait for the 1990 data to become available, but will use 1980 census data until such time as the Census Bureau makes 1990 census data available.

Tier 2 loans to intermediaries carry an interest rate of 1.25 percentage points below the 5-year Treasury bill rate. Tier 2 intermediaries are permitted to make microloans at 7.75 percentage points above their cost of money in their first year of program participation and 7.75 percentage points above their average cost of money in the second and subsequent years of program participation. Beginning October 1, 1992, the amount of a technical assistance grant to a Tier 2 intermediary will be up to 25 percent of its SBA loan amount, provided that the intermediary contributes 25 percent of the amount of the grant either in cash or in-kind contributions to its microloan program.

Tier 3 applies to any intermediary which meets the requirements of Tier 2 and which has a microloan portfolio that averages $5,000 or less. A Tier 3 intermediary will receive its SBA loan(s) at an interest rate of 2 percentage points below the 5-year Treasury bill rate. In order to help defray some of the higher cost of making loans of $5,000 or less, intermediaries making such loans are permitted to charge 9.5 percentage points above their cost of money in their first year of program participation and 9.5 percentage points above their average cost of money in the second and later years of program participation. Beginning October 1, 1992, in addition to the technical assistance grant of up to 25 percent which is available to a Tier 3 intermediary because it qualifies under Tier 2, a Tier 3 intermediary may also receive an additional amount equal to 5 percent of its loan amount in a grant to provide technical assistance to the microborrowers. A Tier 3 intermediary is not required to provide a matching contribution for the additional 5 percent grant.

In order to provide access to microloans to all parts of the nation, section 113 amends the definition of "intermediary" to include a consortium of private, nonprofit organizations or nonprofit community development corporations, and to include, if SBA determines that certain conditions have been met, a quasi-governmental economic development entity, such as a planning and development district. The Committee expects that a consortium will only be eligible to become a microloan intermediary if each member of the consortium has the required microlending experience.

A quasi-governmental economic development entity may become an intermediary only if SBA first determines either that SBA received no application from another qualified eligible entity to serve the geographic area in question, or SBA has received an application from an entity to serve a specified area, but has determined in writing that the needs of the service area cannot be adequately met by that entity. States, counties and municipalities and their agencies are expressly excluded from the definition of intermediary.

Section 113 also permits an intermediary which has two or more separate sites to qualify for a blended interest rate on its SBA loan and a blended maximum percentage for its grant. In establishing grant percentages and interest rates on loans to an intermediary, SBA is to consider each site separately based on the intermediary's projected allocation of the loan proceeds among sites adjusted no more often than semi-annually to reflect the intermediary's actual lending practices during its participation in the program. Similarly, in determining which tier of program participation is appropriate for each intermediary, SBA may consider the projected service area and projected loan size and may make adjustments, as necessary, after the first year of program participation to reflect the actual lending practices of the intermediary.

Section 113 also authorizes technical assistance grants for training of the intermediaries. Experienced microlending organizations may receive such grants from SBA to provide training to less experienced intermediaries to ensure that they have the knowledge, skills and understanding of microlending practices and potential problems to operate successful microloan programs. SBA is authorized to reserve 3 percent of its microloan appropriation annually for such purposes.

To accommodate the increased appropriations available for the program, which remain available until expended, this section increases the number of programs from 35 to 60 in FY 1992 and from 60 to 110 in FY 1993 and beyond. This section also permits SBA to fund up to 4 programs per state in the two-year period of FY 1992 and 1993 and an additional 2 programs per state in each of the remaining years of the program. The dollar cap per State is increased from $1 million to $1.5 million in FY 1992 and from $1.5 million to $2.5 million thereafter.

SEC. 114. REGULATIONS.

This section requires SBA to publish interim final regulations within 45 days of enactment of the statute. The Committee expects that this expedited schedule will enable SBA to fund additional intermediaries during FY 1992.

SEC. 115. AUTHORIZATION OF APPROPRIATIONS.

This section increases the authorized appropriations levels to accommodate the increased appropriations made available for microloans by the Dire Emergency Supplemental Appropriations Act (Pub. L. 102-302) and projected future outlays resulting from the increased number of programs.

TITLE II—AMENDMENTS TO THE SMALL BUSINESS ACT AND RELATED ACTS

Subtitle A—Small Business Competitiveness Demonstration Program

SEC. 201. EXTENSION OF DEMONSTRATION PROGRAMS.

The "Business Opportunity Development Reform Act of 1988", Public Law 100-656, included the "Small Business Competitiveness Demonstration Program Act of 1988" as Title VII, providing for the conduct of three demonstration program regarding the participation of small business concerns in the federal procurement market. One demonstration program focused on the designated industry groups of construction (excluding dredging), refuse systems and related services, architectural and engineering services (including surveying and mapping), and non-nuclear ship repair. The basic premise of the demonstration program was that in industry categories already numerically dominated by small business concerns, such firms could successfully compete for contracts in unrestricted competitions and substantially exceed the Government-wide goal for small business participation, 20 percent. Further, the advocates for small business participation in Federal procurement within the procuring agencies and the Small Business Administration have tended to focus their efforts on industry groups in which small business concerns could succeed without the protection restriction competitions (Small business "set-asides"), and expended inadequate effort to expand small business participation in procurements of products or services which have historically demonstrated low rates of small business participation, despite ample small business capability within the overall economy. Under the demonstration program, contracting opportunities within the four designated industry groups shall be solicited on a unrestricted basis, if the rate of small business participation exceeds 40 percent, a rate twice the Government-wide goal. In the event that the participation rate was less than 40 percent during the prior fiscal year quarter, small business set-asides would be selectively reimposed as needed to once again attain the 40 percent goal. Within the overall 40 percent goal, the demonstration program prescribed a participation goal of 15 percent for emerging small business concerns, defined as those firms in the bottom half of the applicable size standard.

In addition, two alternative, industry specific demonstration programs were established pertaining to the dredging industry and the clothing and textiles industry. The alternative demonstration program pertaining to dredging prescribed increasing participation goals for small business concerns and emerging small business concerns during the term of the program. The alternative demonstration program for clothing and textiles purchased by the Department of Defense sought to permit increased participation of other than small business concerns, while maintaining a small business participation rate of at least 50 percent.

The Small Business Competitiveness Demonstration Program and both of the alternative demonstration programs included a requirement for periodic reporting. In addition, two oversight hearings were conducted by the Senate Committee on Small Business.

According to report from the Office of Federal Procurement Policy on the broader Demonstration Program, the competitiveness of small business concerns in the four designated industry groups seems to be confirmed. Significant data collection problems within the participating agencies during its initial two years were identified.

According to reports submitted to the Congress by the Defense Logistics Agency, the alternative demonstration program for clothing and textiles has been unqualified success. The industrial base supporting Defense requirements for clothing and textile products has been expanded through the participation of other than small business concerns and the rate of small business participation has remained in excess of 70 percent.

Reports from the US Army Corps of Engineers, the manager of the alternative demonstration program for dredging, reflect that the annually increasing goals for participation by small businesses and emerging small businesses was not fully attainable.

As originally enacted, the broad Competitiveness Demonstration Program (involving the four designated industry groups) has an expiration date of December 31, 1992. Both of the alternative demonstration program have an expiration date of September 30, 1992. Section 201 of the bill extends, until September 30, 1996, the Small Business Competitiveness Demonstration Program (subsection (a)), the Alternative Program for Clothing and Textiles (subsection (b)), and the dredging demonstration program (subsection (c)).

SEC. 202. MANAGEMENT IMPROVEMENTS TO THE SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM.

Subsecton (a) amends Section 712(d) of the Small Business Competitiveness Demonstra-

tion Program to require implementation on a fiscal year basis rather than the calendar year basis. As originally enacted, the Demonstration Program was initiated on a calendar-year basis to expedite implementation (commencing on January 1, 1989), but appears to have contributed to the data collection and data accuracy problems that have plagued the program.

Subsection (b) amends section 712(b) of the Demonstration Program to require the application of the remedial tools of restricted competitions on a targeted basis aimed at the buying activities that have failed to attain the required percentage of small business participation. While not specifically addressed in the amendment, it is also expected that the implementation of this amendment will provide for providing notice to the public regarding the reinstatement of restricted competitions. Such notices are not presently provided. The reimposition of restricted competitions is to be announced to the public through a notice published in the *Federal Register*, if restricted competitions are to be broadly reimposed by a participating agency. So-called "special notices" in the Commerce Business Daily are to be used to periodically supplement such *Federal Register* notices, and may be used as an alternative means of providing such notice, if the reimposition of restricted competitions will affect only a limited number of buying activities.

Subsection (c) adds a new subsection to Section 713 of the Demonstration Program to eliminate any uncertainty that the requirements of 10 U.S.C. 2855(a) and (b) continue to apply to solicitations for the procurement of architectural and engineering (including surveying and mapping) by the Department of Defense during the Term of the Small Business Competitiveness Demonstration Program.

Subsection (d) provides for the conduct of a limited test program to collect data regarding the participation of small business concerns (including disadvantaged small business concerns) as other than prime contractors in the provision of architectural and engineering (including surveying and mapping)(A–E) services to four of the Federal agencies currently participating in the Demonstration Program. The test program is grounded on the premise that the actual rate of small business participation on A–E contracts is substantially higher than is now being reflected in data captured by the Government's existing procurement data system. A January 1991 report of a subcontracting study conducted by Clemson University for the SBA Office of the Chief Counsel for Advocacy found substantial under-reporting of participation by small business concerns as lower-tier subcontractors under the Federal contracting activity studied. A–E services was not one of the services addressed in the Clemson University study.

When originally enacted in 1988, the Small Business Competitiveness Demonstration Program contained a much broader subcontract data collection test provision. The Federal agencies participating in the Demonstration Program made a convincing argument that it would be too burdensome for them. The provision mandating this broader subcontract data collection test was subsequently repealed by section 243 of Public Law 101–547, the "Small Business Administration Reauthorization and Amendments Act of 1990", to provide time for the formulation of a concept for a less burdensome subcontract data collection test program.

The program required by subsection (d) would apply to only four of the agencies currently participating in the Small Business Competitiveness Demonstration Program (EPA, NASA, Army Corps of Engineers—Civil Works, and Department of Energy) and would be limited to collecting data relating to A–E contracts only. The provision would provide discretionary authority to the Administrator for Federal Procurement Policy to expand the data collection program. The test program would begin on October 1, 1992 (or as soon thereafter as practicable) and conclude on September 30, 1996.

It should be noted that the provision requires the collection of data regarding the participation of small concerns "as other than prime contractors". It is expected that the Administrator for Federal Procurement Policy will formulate a data collection program that will address not only subcontracting (including subcontracting below the first tier), but also address joint venture-type arrangements at the prime contract level. As with the formulation of the test plan and policy direction regarding the overall Demonstration Program issued pursuant to Section 715 of Public Law 100–656, it is expected that the Administrator for Federal Procurement Policy will provide an opportunity for public participation and comment when formulating the implementation of the data collection program required by this new subsection.

Subsection (e) amends section 714(c) regarding reporting under the Small Business Competitiveness Demonstration Program. The purpose of the amendment is to provide access to data regarding the status of participating small business concerns as well as their size. Such data regarding the status of a small business concern as a so-called disadvantaged small business concern is currently collected.

While not addressed in the form of a specific amendment to Section 714 of the Demonstration Program Act, it is expected that reports will reflect the number of award actions as well as their cumulative dollar value to provide the perspective regarding the volume of business opportunities being won by small business concerns. Such data is currently available in the Federal Procurement Data System.

Subsection (f) amends Section 716 of the Small Business Competitiveness Demonstration Program Act regarding reports to the Congress. Under the proposed amendment a report would be due in 1992, as presently required, and in 1996, to capture the results of the Program extension provided by subsection (a). Under existing law the report due in 1992 is to include recommendations. Submission of recommendations is expressly deferred to the report due in 1996.

It is noted with approval and commendation that the Administrator for Federal Procurement Policy has issued on his own initiative three annual reports which have presented on a cumulative basis the progress of the implementation of the Small Business Competitiveness Demonstration Program. This has required substantial effort by the staff of the Office of Federal Procurement Policy, but has provided valuable information to Congress and to the affected segments of the business community.

Subsection (g) amends Section 717(d) to improve the accuracy of the data being reported relating to contracts for the designated industry group of architectural and engineering (A–E) services. Data pertaining to the rate of small business participation in contracting to furnish A–E services (including surveying and mapping) has been seriously distorted by the inclusion of engineering services that do not meet the statutory definition of A–E services (40 U.S.C. 541(3)). This has been an especially persistent and serious problem at the Department of Defense. Contracts for engineering services relating to the development or modification of weapon systems are being reported as A–E contract awards. To assure that only contracts for true A–E services are counted, the amendment requires that to be counted as an A–E contract award, the contract must have been solicited and awarded pursuant to the qualification-based procedures specified in Title IX of the Federal Property and Administrative Services Act of 1949", the so-called "Brooks A–E Act" selection procedures. This amendment imposes no new data collection burden on the participating agencies, since the Government-wide procurement data collection form (Standard Form 279) already contains a data element regarding whether Brooks A–E Act procedures were used in making the contract award.

Subsection (h) seeks to prevent the unwarranted use of restricted competitions for the award of A–E contracts by the participating agencies pending the implementation of the improved data collection required by subsection (g) and the data collection relating to other than prime contract awards required by subsection (d). This is accomplished by temporarily modifying the percentage of small business participation that would trigger the reimposition of restricted competitions. In large measure, the provision is prompted by the action of the Department of Defense in October of 1991 to re-impose restricted competitions regarding the award of contracts for A–E services on the basis that the small business participation rate had been missed by less than one percent, despite being supplied with analyses of DOD's own data which demonstrated that engineering contracts relating to weapon systems and other activities had been erroneously reported as A–E services. These analyses reflect that millions of dollars of contract awards to such "recognized" A/E firms as Boeing Aerospace and Electronics, General Dynamics, General Electric, Raytheon, and McDonnell Douglas have been included and used in determining whether the 40 percent small business participation rate was achieved.

Subsection (i) requires the Administrator for Federal Procurement Policy to issue appropriate modifications to the test plan and policy direction pertaining to the implementation of the Small Business Competitiveness Demonstration Program, which the Administrator has issued pursuant to Section 715 of Public Law 100–656.

SEC. 203. AMENDMENTS TO THE DREDGING DEMONSTRATION PROGRAM.

Subsection (a) specifies goals for the participation of small business concerns and emerging small business concerns in dredging contracting opportunities during the four-year extension of the Dredging Demonstration Program, as authorized in Section 201(c). The small business participation goal is set at 20 percent, including a 5 percent goal for the participation of emerging small business concerns.

Subsection (b) specifies that the dollar value of any dredging contracts performed exclusively by either so-called dustpan dredges or seagoing hopper dredges shall be aggregated together and then subtracted from the total value of dredging contracts before calculating whether the goals for the participation of small business concerns and emerging small business concerns has been attained.

This segmentation of the dredging industry on the basis of equipment type is justified on the basis that a small business concern could not have the business base to own and operate such dredging equipment. In implementing the amendment to the Dredging Demonstration Program made by this subsection, it is emphasized that only those dredging contracts which must be performed exclusively by the specified types of equipment are to be excluded. The value of dredging contracts performed using other types of dredging equipment in addition to either a dustpan dredge or a seagoing hopper dredge are not subject to being excluded.

Subsection (c) provides additional guidance to contracting officers within the U.S. Army Corps of Engineers when making the determination whether to restrict the competition for a dredging contract to small business concerns pursuant to Section 19.5 (Set-Asides for Small Business) of the Federal Acquisition Regulation (FAR). Under the FAR provisions, the contracting officer shall make a determination to set aside the contract to exclusive small business competition only if there is a reasonable expectation that offers will be obtained from at least two responsible small business concerns and the award will be made at a fair market price. In essence, a responsible contractor is one that has (or can demonstrate the ability to timely obtain) the total array of resources necessary to timely perform the contract in accordance with the contractual specifications. This provision emphasizes the contracting officer's obligation to make a determination regarding responsibility only on the basis of specific findings, which are to be reflected in the contract file. It is expected that the contracting officer shall rely on the technical expertise and recommendations of the personnel of the Construction-Operations Division within the Office of the District Engineer in accessing the technical capabilities of prospective small business offerors. It should be noted that this provision does not require the contracting officer to conduct a pre-award survey of each perspective small business offeror before making the determination to restrict competition to small business concerns, but it does seek to enhance the data supporting the contracting officer's decision regarding the capabilities of prospective small business offerors to perform the contract in accordance with its specifications, including schedule. Special attention needs to be directed to the capabilities and operational status of the equipment to be employed by the small business offeror, whether actually on-hand or to be obtained.

Subsection (d) adjusts the reporting requirements regarding the Dredging Demonstration Program to accommodate the extension of the program made by Section 201(c).

Subtitle B—Defense Economic Transition Assistance

SEC. 211. SECTION 7(a) LOAN PROGRAM.

This section amends the SBA 7(a) Guaranteed Loan Program by adding a new paragraph to specifically authorize loans to firms requiring capital to adjust their business activities due to the loss of: (a) contracting opportunities as Defense prime contractors (or subcontractors or suppliers to Defense prime contractors); or (2) Government or commercial business opportunities resulting from the closure or reduction of a DOD facility in the community. Loans would also be authorized to assist in the formation of new businesses by two groups of individuals. First, military personnel or DOD civilians, who have been involuntarily separated from Federal service or have voluntarily left in response to a program providing inducements to encourage voluntary separation or early retirement. The second group is employees of a prime contractor or a subcontractor (including suppliers), which has been forced to reduce its workforce due to the termination or substantial reduction of a DOD contract, who are involuntarily terminated or who resign voluntarily pursuant to a program offering inducements to voluntarily resign or take early retirement.

The expansion of the SBA Section 7(a) Guaranteed Loan Program to make loans to the classes of firms and individuals described in this new paragraph is to be implemented only to the extent that funds are appropriated expressly for the purpose of making loans under this new paragraph. In implementing this new authority, the SBA shall authorize self-certification by loan applicants that they meet the eligibility criteria specified. Such a self-certification process will avoid placing unworkable administrative burdens on the financial institutions making the loans.

SEC. 212. SMALL BUSINESS DEVELOPMENT CENTER PROGRAM.

This section amends the Small Business Development Center (SBDC) Program authorized by Section 21 of the Small Business Act. It would specifically authorize SBDCs to undertake an array of activities to assist small business concerns dependent on DOD contracting (as prime contractors, subcontractors, or suppliers) or adversely affected by the closure or reduction of a DOD facility within their community.

Subtitle C—Small Business Administration Management

SEC. 221. DISADVANTAGED SMALL BUSINESS STATUS DECISIONS.

This provision relates to SBA's exercise of the authority provided by Section 7(j)(11)(F)(vii), which was added by Section 201 of the "Business Opportunity Development Reform Act of 1988", Public Law 100-656. Section 7(j)(11)(F)(vii) authorizes the director of the Program Certification and Eligibility Division within SBA's Office of Minority Small Business and Capital Ownership Development (MSB/COD) to decide protests regarding a small business concern's self-certification of its status as a "disadvantaged small business concern", meeting the standards of Section 8(d) of the Small Business Act. SBA exercise of this protest authority is especially important to the administration of DOD's Section 1207 Program, which establishes a five percent goal for the award of DOD contracts to disadvantaged small business concerns as well as to Historically Black Colleges and Universities and certain other educational institutions through contracting and subcontracting. Currently, SBA does not publish decisions issued under this statutory authority. The provision would require SBA to publish future decisions. Decisions already issued (numbering approximately 325) would have to be published to have any precedential value.

SEC. 222. ESTABLISHMENT OF SIZE STANDARDS.

Under Section 3 of the Small Business Act, SBA establishes size standards under which a business concern may be recognized as a small business concern for the purpose of participating in many Federal programs as well as the programs of state and local governments and some private sector entities. While these SBA size standards are accorded broad recognition, alternative small business size standards have been statutorily established for the purposes of the application of specific statutory requirements (e.g., Americans With Disabilities Act). In addition, under SBA regulations, a federal agency is permitted to establish its own agency small business size standards for activities not covered by the Small Business Act after merely consulting with the Office of the Chief Counsel for Advocacy (most typically these agency size standards are established to comply with the Regulatory Flexibility Act).

The amendment would require any agency size standard to be approved by the SBA Administrator (thus obtaining a review by the SBA's Size Policy Staff, which sets the other size standards) and to comply with SBA policies regarding the establishment of size standards (e.g., number of employees for manufacturing concerns; gross receipts for firms providing services). This would encourage greater uniformity of small business size standards within Government and foster the establishment of agency size standards using common criteria. The provision would not, however, impair the ability of an agency to implement small business size standards without obtaining SBA's concurrence in response to a specific statutory direction or a general legislative authorization to prescribe small business size standards.

SEC. 223. MANAGEMENT OF SMALL BUSINESS DEVELOPMENT CENTER PROGRAM.

This section requires the Administrator of the Small Business Administration to furnish to designated committees of the Senate and House of Representatives the test of proposed regulations for the management of the Small Business Development Center (SBDC) Program. It is understood that the 45-days accorded for the submission of such proposed SBDC Program regulations should not present an undue burden on the SBA, since such proposed program regulations are currently available within the SBA, having been drafted over a lengthly period in cooperation with various SBDC managers.

Subtitle D—Technical Amendments

SEC. 231. COMMISSION ON MINORITY BUSINESS DEVELOPMENT.

This section clarifies the termination date for the Commission on Minority Business Development created by Section 505 of the "Business Opportunity Development Reform Act of 1988", Public Law 100-656. The Commission is charged with reviewing and assessing the operation of all Federal programs assisting minority business enterprise. The General Services Administration has determined that the Commission expired on June 30, 1992, a date 90 days after the date on which GSA determined the Commission should have submitted its final report. This determination by GSA is contrary to the explicit statutory language regarding the Commission's termination. Section 505(f) of Public Law 100-656, as amended by Section 20 of Public Law 101-37, states: "The Commission shall cease to exist within 90 days after it submits its final report to the Congress and to the President." The Commission expects to submit its final report by the end of July, 1992. Adequate funds for the Commission's planned operations through September 30, 1992 have been appropriated and made available to the Commission.

SEC. 232. TECHNICAL AMENDMENTS.

This section makes a series of technical corrections to the Small Business Act, correcting misspelled words and punctuation.

TITLE III—STUDIES AND RESOLUTIONS

Subtitle A—Access to Surety Bonding

SEC. 301. SHORT TITLE.

This section establishes the short title of the subtitle as the "Small Business Access to Surety Bonding Survey Act of 1992".

SEC. 302. SURVEY.

Subsection (a) requires the General Accounting Office to conduct a comprehensive survey of firms relating to the experiences of obtaining surety bonding needed to meet bonding requirements imposed by Federal, State and local governments by law as a precondition to the award of a construction contract and as a business practice by many private sector purchasers of construction services.

Subsection (b) prescribes in some detail the content of the questions to be included in the GAO's questionnaire.

Subsection (c) describes the types of firms to be included in the GAO's survey.

SEC. 303. REPORT.

Subsection (a) requires the GAO to submit a report on the findings of the survey required by section 302 to the Committees on Small Business of the Senate and House of Representatives. GAO is to obtain formal comments from the Administrator of the Small Business Administration, which shall be included in the text of the report.

Subsection (b) specifies the content of the GAO's report. The GAO is not required to submit recommendations based on the findings of the survey.

SEC. 304. DEFINITIONS.

This section specifies the definition of terms used in the "Small Business Access to Surety Bonding Survey Act of 1992" by appropriate references to existing definitions in the Small Business Act.

Subtitle B—Small Business Loan Secondary Market Study

SEC. 311. SECONDARY MARKET FOR LOANS TO SMALL BUSINESS.

Section 311 directs the Secretary of the Treasury, the Director of the Congressional Budget Office and the Chairman of the Securities and Exchange Commission, in consultation with the Administrator of the Small Business Administration, to conduct a study of the potential benefits of developing a secondary market for loans to small businesses.

Adequate access to debt and/or equity capital is a critical component of small business expansion and success. Small businesses, and especially small business concerns owned and controlled by socially and economically disadvantaged individuals, are experiencing increased difficulties in obtaining credit. An active secondary market in small business loans could ease this problem for small businesses as it has for residential real estate loans.

Presently, legal and regulatory impediments prevent the formation of a secondary market. This study is designed to bring to light these problems and to offer proposals to aid in the development of the secondary market for small business loans, if it is economically feasible.

Subtitle C—Contract Bundling Study

SEC. 321. CONTRACT BUNDLING STUDY.

Subsection (a) requires the Administrator of the Small Business Administration, acting through the Associate Administrator for Procurement Assistance, to conduct a study regarding so-called "contract bundling" by the various procuring agencies.

Subsection (b) specifies the purposes and objectives of the study. As the procurement workforces of the various buying activities continue to be reduced, there is a very strong inclination on the part of procurement managers to take every opportunity to combine into single large contracts requirements for good or services (including construction) that would previously have been acquired through multiple contracts of a smaller size. Such contract bundling can be a severe obstacle to participation by small business concerns and disadvantaged small business concerns as prime contractors or even first-tier subcontractors. The 1990 SBA authorization act. P.L. 101-574, contained a remedial provision, Section 208 (Bundling of Contracts). Indications are that the bundling problem has continued to worsen and that the remedy was inadequate.

Subsection (c) specifies the participants in the study in addition to the Small Business Administration.

Subsection (d) requires that the study required by subsection (a) be completed by March 31, 1993.

Subsection (e) requires a report regarding the findings of the study to be submitted to the Committees on Small Business of the Senate and House of Representatives by May 15, 1993. The report shall include appropriate legislative and regulatory recommendations.

Subsection (f) specifies a definition of the term "contract bundling".

Subtitle D—Resolution Regarding Small Business Access to Capital

SEC. 331. SENSE OF THE CONGRESS.

Section 331 expresses the Sense of the Congress that financial institutions should expand their efforts to provide credit to small businesses, with special emphasis on assisting minority-owned businesses. It further expenses the Sense of the Congress that legislation to assist small businesses the given a high priority for passage and should be crafted in such a manner so as to ensure that legislation and regulations do not disproportionately impact small businesses in a negative way.

Mr. KASTEN. Mr. President, I rise today as the ranking Republican of the Senate Small Business Committee to join my distinguished colleague from Arkansas, the Chairman of the Senate Small Business Committee, in support of the Small Business Credit and Business Opportunity Enhancement Act of 1992. I am proud to stand with the Senator from Arkansas in offering this legislation.

This legislation is the product of months of work by the Senate Small Business Committee to craft legislation that will help stimulate small business growth and development. This bill gets right to the heart of helping small business in America, which is where the greatest potential for future economic growth lies. Most importantly, this legislation will create jobs for Americans. Almost two-thirds of the jobs created in recent years can be credited to small business. Over 80 percent of the jobs in my home State of Wisconsin are provided by small business. If we are going to get our economy back on the road to growth and prosperity, small business is where we must start.

One of the major components of the legislation we are introducing today is the continued authorization of the U.S. Small Business Administration's 7(a) guaranteed loan program. Our legislation would increase the maximum loan guarantee level of the Agency to $5.2 billion for fiscal year 1992, $6.2 billion for fiscal year 1993, and $7.2 billion for fiscal year 1994. Increasing the authorization level for the 7(a) program is necessary because of the increased demand placed on this program by small businesses who do not have access to any other sources of capital. Demand in my home State of Wisconsin, alone, is up substantially. This legislation will help deal with the increased demand by allowing more capital to flow out to the private sector and create jobs.

The lack of investment capital and credit in the United States is one of the major barriers today to the growth and development of our Nation's small businesses. This was emphasized by the President in his State of the Union address in January. Small business owners across the country are still feeling the effects of the credit and capital crunch. In the last year alone, the total of outstanding commercial and industrial loans declined around $30 billion. For many small business owners, the 7(a) loan guarantee program has meant the difference between keeping the doors of their business open, or shutting down and laying off their workers.

My home State of Wisconsin takes full advantage of the SBA 7(a) program. Last year Wisconsin was the fifth largest user of 7(a) loan guarantees. So far this year, from October through June, Wisconsin banks have made 422 loans totalling over $103 million with the SBA guarantee to Wisconsin businesses—a 17-percent increase over last year.

I want to stress that this program does not make direct loans, but merely guarantees bank loans to small businesses. Each small business can receive a commercial loan of up to $750,000. These loans are leveraged at a 20-to-1 ratio. That means that every $1 of taxpayers' money translates into $20 in loaned money to a small business owner. Using loan guarantees puts fewer taxpayers' dollars at risk, and maximizes their potential. This conclusion is supported by an extensive evaluation of the 7(a) loan guarantee program by Price Waterhouse, who found in their report that the 7(a) program has become a true success story in helping small business owners across the country.

The success of the 7(a) loan guarantee program coupled with the current credit and capital crunch has made the program very popular with small businesses and banks, and this popularity is increasing. When it looked like funding for 7(a) loan guarantees was going to run dry, together with Chairman BUMPERS, I helped lead the fight in the Senate to pass the $46 million emergency appropriation. This translates into $1.4 billion in lending authority, which will allow the program to continue running through the fiscal year.

The 7(a) program has gone through a transformation in recent years. In 1980

the program was experiencing serious difficulties with defaulted loans. However, the program was put back on track with proper management and attention. Today the SBA 7(a) loan program has a default rate one-seventh of what it was in 1980. Between 1980 and 1991, the SBA has guaranteed over $30 billion in loans, and the current return to the federal government is estimated by some sources to be as high as 264 percent. This program is a perfect demonstration of how government can help businesses help themselves. One would have to look hard to find another government program that accomplishes as much for businesses in America without getting in their way.

I am also proud of this legislation because it expands and improves a program which I believe can provide much-needed capital to new and emerging small business entrepreneurs. I'm speaking about the Microloans Demonstration Program, legislation that the Chairman and I worked to create and fund last year.

This legislation today expands the program from 35 to 60 pilot projects, and increases the maximum amount of money for each state program from $1.2 million to $1.875 million. It also raises the number of programs a State can receive from two to four. I'm pleased to announce that my home State of Wisconsin will be able to receive two additional programs this year. Earlier this summer, I was pleased to announce that two outstanding organizations in Wisconsin have been selected to participate in the microloans program—the Women's Business Initiative Corporation of Milwaukee and Advocap of Fond du Lac and Winnebago Counties. I am hopeful that, because of this legislation, Wisconsin will quality to receive two additional programs. It is important to get them up and running and helping entrepreneurs as soon as possible.

Our amendments to the microloans program also provide additional incentives for the intermediaries or the people who make the loans. Under the current program, intermediaries receive 20 percent of the value of the loan money to provide technical marketing and management assistance to the borrowers. Under this legislation, intermediaries will receive 25 percent of the value of the loan. This technical assistance is valuable because it provides an added boost to help a business succeed, pay back its microloan, and move on to more traditional financing methods.

Most importantly, however, our revisions more closely target the demonstration programs in the areas that need them the most—both urban and rural areas with high unemployment. We included specific provisions in the legislation to target and provide additional incentives for microloan intermediaries to serve areas of high unemployment like Milwaukee's central city. It is absolutely critical that this program serve the people who need it the most. We've included language directing the Administration to give priority to programs located in low income or labor surplus areas.

Mr. President, sometimes a $1,000 or $10,000 loan is all the difference it takes between someone getting the opportunity to experience enterpreneurship and own their own business or remaining underemployed or unemployed.

While the size limit for microloans is $25,000, the changes we are making with this piece of legislation will encourage more $5,000 loans. This will help ensure that no entrepreneur with the ability to succeed is shut out because they are too small.

There are many women, minority and low-income individuals that have good business ideas and could become successful entrepreneurs if given a chance—and that's what the microloans program is all about—a chance. Whether it's a sewing business or toy making, a delivery service or a maintenance company—this program brings hope to many people.

As the Senate moves to consider this important legislation, I want to emphasize once again that the single greatest result of the Small Business Credit and Business Opportunity Enhancement Act of 1992 will be the creation of jobs. Our country has weathered the toughest days of the economic storm during the recession, but now we need to pull out of our slump and do it decisively.

I believe that Congress needs to do more to stimulate our economy and help provide jobs to support families. This legislation will help further a program which has a proven track record in this regard. It will also create new business opportunities for many people who previously had no hope of owning their own business, and no chance to climb out of their circumstances. This will make a difference for thousands of families across the country, and help move America and its small businesses toward growth and prosperity.

Finally, I want to commend the distinguished chairman of the Small Business Committee for his leadership in advancing this important small business initiative. I also want to applaud the efforts of staff on both sides of the aisle, including John Ball, Patty Forbes and Bill Montalto of the majority staff and Cesar Conda, Kent Knutson, and Ken Dortzbach of the minority staff.

I urge the Senate to adopt this bill.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 2913) was agreed to.

Mr. WOFFORD. Mr. President, the legislation being considered today includes the Small Business Access to Surety Bonding Survey Act of 1992, which I introduced earlier this year and is cosponsored by Senators MIKULSKI, CRANSTON, KASTEN, BURDICK, SIMON, DECONCINI, DIXON, DURENBERGER, PACKWOOD, and AKAKA. This legislation will help determine whether there is improper discrimination in the surety bond market.

Surety bonds, which guarantee the performance of a contractor's or subcontractor's work, are often necessary for contractors to get business. For instance, surety bonds are required on all Federal construction in excess of $25,000 and all federally assisted construction projects in excess of $100,000. Most state and local governments and increasing numbers of private projects also require surety bonds.

It is without question that minority owned firms face obstacles to obtaining contracts. And while there may be many reasons for the denial of contracts, small businesses, especially those owned by women and minorities, have consistently asserted that corporate surety firms too frequently impede them.

The Small Business Access to Surety Bonding Survey Act will require the comptroller General to conduct a survey of business firms, especially those owned by women and minorities, to determine their experiences in obtaining surety bonding from corporate surety firms. The bill establishes a base line of questions to be included in a questionnaire to be sent to such firms in order to ensure a comprehensive review. Finally, the Comptroller General will be required to submit a report on its findings to the House and Senate Small Business Committees within 18 months of enactment. I will certainly follow up on the results of that report.

Mr. President, I thank the chairman of the Small Business Committee, Senator BUMPERS, and the ranking member, Senator KASTEN, for their support of this legislation.

Mr. MACK. Mr. President, I rise today in strong support of the committee substitute to H.R. 4111, the Small Business Credit and Business Opportunity Enhancement Act of 1992. The main component of this legislation provides additional new credit authority for the Small Business Administration [SBA] 7(a) loan guarantee program. The accounting firm of Price Waterhouse conducted an extensive study of this program, and the results are quite compelling. The study found that between 1985 and 1989:

The 7(a) loan recipients' employment growth was 167%, compared to zero percent growth for the nonrecipient companies.

Recipient companies experienced sales revenue growth at a rate of 300 percent, nearly 10 times that of nonrecipient companies.

The 7(a) guarantee recipients reported a 255-percent growth in payroll,

332-percent growth in payroll taxes, 137-percent growth in combined Federal, State and local taxes, 199-percent growth in profits, and a 1,100-percent growth in pretax incomes.

Total sales revenues in 1989 of companies receiving 7(a) loan guarantees amounted to nearly $7.2 billion. Total payroll and profits for that same year totaled more than $2.1 billion.

The Small Business Administration reported that for the first five months of fiscal year 1992, 7(a) loan demand is approximately 30% above the same period a year ago. The success of this program, combined with increased demand for 7(a) loan guarantees, led the administration to request in February 1992, that Congress provide an additional $1.1 billion in new credit authority. This bill will increase the authority to $5.2 billion in the current fiscal year, $6.2 billion in fiscal year 1993, and $7.2 billion in fiscal year 1994. While I would have preferred these authorities be higher, I wholeheartedly support these increases. My only concern is that these increases will not keep pace with demand, and Congress will again be called upon next year to provide for increased authority.

I am also pleased that the committee substitute includes two amendments which I offered. The first amendment directs the Secretary of the Treasury, the Director of the Congressional Budget Office, and the chairman of the Securities and Exchange Commission, in consultation with the administrator of the Small Business Administration, to conduct a study on the potential benefits of developing a secondary market for loans to small businesses. Adequate access to debt and/or equity capital is a critical component of small business expansion and success. Small businesses, and particularly minority-owned small businesses, are experiencing increased difficulties in obtaining credit. An active secondary market could ease this problem for small businesses as it has for residential real estate loans. Presently, legal and regulatory impediments prevent the formation of a secondary market. This study will bring to light these problems and offer proposals to aid in the development of a secondary market for small business loans if it is economically feasible.

My other amendment expresses the sense of the Congress that financial institutions should expand their markets to provide credit to small businesses, with special emphasis on minority-owned small businesses. It further expresses the sense of the Congress that legislation which assist small businesses be given a high priority for passage, and all legislation should be crafted in such a manner so as to ensure that legislation and regulations do not disproportionately impact small businesses in a negative way.

I would like to express my appreciation to the chairman of the Committee on Small Business, Senator BUMPERS, and the ranking member, Senator KASTEN, for their willingness to accept these two amendments.

I urge my colleagues to join me in supporting this legislation of great significance to small businesses throughout America.

The PRESIDING OFFICER. The question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read a third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, shall the bill pass?

So the bill (H.R. 4111), as amended, was passed.

Mr. SIMON. Mr. President, I move to reconsider the vote.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. SIMON. Mr. President, I ask unanimous consent that the text of the bill be printed as it passed the Senate.

The PRESIDING OFFICER. Without objection, it is so ordered.

MARSH-BILLINGS NATIONAL HISTORICAL PARK ESTABLISHMENT ACT

Mr. SIMON. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 2079.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives.

Resolved, That the bill from the Senate (S. 2079) entitled "An Act to establish the Marsh-Billings National Historical Park in the State of Vermont, and for other purposes", do pass the following amendment:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Marsh-Billings National Historical Park Establishment Act".

SEC. 2. PURPOSES.

The purposes of this Act are—

(1) to interpret the history and evolution of conservation stewardship in America;

(2) to recognize and interpret the contributions and birthplace of George Perkins Marsh, pioneering environmentalist, author of Man and Nature, statesman, lawyer, and linguist;

(3) to recognize and interpret the contributions of Frederick Billings, conservationist, pioneer in reforestation and scientific farm management, lawyer, philanthropist, and railroad builder, who extended the principles of land management introduced by Marsh;

(4) to preserve the Marsh-Billings Mansion and its surrounding lands; and

(5) to recognize the significant contributions of Julia Billings, Mary Billings French, Mary French Rockefeller, and Laurance Spelman Rockefeller in perpetuating the Marsh-Billings heritage.

SEC. 3. ESTABLISHMENT OF MARSH-BILLINGS NATIONAL HISTORICAL PARK.

(a) IN GENERAL.—There is established as a unit of the National Park System the Marsh-Billings National Historical Park in Windsor County, Vermont (hereinafter in this Act referred to as the "park").

(b) BOUNDARIES AND MAP.—(1) The park shall consist of a historic zone, including the Marsh-Billings Mansion, surrounding buildings and a portion of the area known as "Mt. Tom", comprising approximately 555 acres, and a protection zone, including the areas presently occupied by the Billings Farm and Museum, comprising approximately 88 acres, all as generally depicted on the map entitled "Marsh-Billings National Historical Park Boundary Map" and dated November 19, 1991.

(2) The map referred to in paragraph (1) shall be on file and available for public inspection in the appropriate offices of the National Park Service, Department of the Interior.

SEC. 4. ADMINISTRATION OF PARK.

(a) IN GENERAL.—The Secretary of the Interior (hereinafter in this Act referred to as the "Secretary") shall administer the park in accordance with this Act, and laws generally applicable to units of the National Park System, including, but not limited to the Act entitled "An Act to establish a National Park Service, and for other purposes, approved August 25, 1916 (16 U.S.C. 1, 2-4).

(b) ACQUISITION OF LANDS.—(1) EXCEPT AS PROVIDED IN PARAGRAPH (2), THE SECRETARY IS AUTHORIZED TO ACQUIRE LANDS OR INTERESTS THEREIN WITHIN THE PARK ONLY BY DONATION.

(2) If the Secretary determines that lands within the protection zone are being used, or there is an imminent threat that such lands will be used, for a purpose that is incompatible with the purposes of this Act, the Secretary may acquire such lands or interests therein by means other than donation.

(3) The Secretary may acquire lands within the historic zone subject to terms and easements providing for the management and commercial operation of existing hiking and cross-country ski trails by the grantor, and the grantor's successors and assigns, such terms and easements shall be in a manner consistent with the purposes of the historic zone. Any changes in the operation and management of existing trails shall be subject to approval by the Secretary.

(c) HISTORIC ZONE.—The primary purposes of the historic zone shall be preservation, education, and interpretation.

(d) PROTECTION ZONE.—(1) The primary purpose of the protection zone shall be to preserve the general character of the setting across from the Marsh-Billings Mansion in such a manner and by such means as will continue to permit current and future compatible uses.

(2) The Secretary shall pursue protection and preservation alternatives for the protection zone by working with affected State and local governments and affected landowners to develop and implement land use practices consistent with this Act.

SEC. 5. MARSH-BILLINGS NATIONAL HISTORICAL PARK SCENIC ZONE.

(a) IN GENERAL.—There is established the Marsh-Billings National Historical Park Scenic Zone (hereinafter in this Act referred to as the "scenic zone"), which shall include those lands as generally depicted on the map entitled "Marsh-Billings National Historical Park Scenic Zone Map" and dated November 19, 1991.

(b) PURPOSE.—The purpose of the scenic zone shall be to protect portions of the natural setting beyond the park boundaries that are visible from the Marsh-Billings Mansion, by such means and in such a manner as will permit current and future compatible uses.

(c) ACQUISITION OF SCENIC EASEMENTS.—Within the boundaries of the scenic zone, the Secretary is authorized only to acquire scenic easements by donation.

SEC. 6. COOPERATIVE AGREEMENTS.

(a) IN GENERAL.—The Secretary may enter into cooperative agreements with such persons or entities as the Secretary determines to be appropriate for the preservation, interpretation, management, and providing of educational and recreational uses for the properties in the park and the scenic zone.

(b) FACILITIES.—The Secretary through cooperative agreements with owners or operators of land and facilities in the protection zone, may provide for facilities in the protection zone to support activities within the historic zone.

SEC. 7. ENDOWMENT.

(a) IN GENERAL.—In accordance with the provisions of subsection (b), the Secretary is authorized to receive and expend funds from an endowment to be established with the Woodstock Foundation, or its successors and assigns.

(b) CONDITIONS.—(1) Funds from the endowment referred to in subsection (a) shall be expended exclusively as the Woodstock Foundation, or its successors and assigns, in consultation with the Secretary, may designate for the preservation and maintenance of the Marsh-Billings Mansion and its immediate surrounding property.

(2) No expenditure shall be made pursuant to this section unless the Secretary determines that such expenditure is consistent with the purposes of this Act.

SEC. 8. RESERVATION OF USE AND OCCUPANCY.

In acquiring land within the historic zone, the Secretary may permit an owner of improved residential property within the boundaries of the historic zone to retain a right of use and occupancy of such property for noncommercial residential purposes for a term not to exceed 25 years or a term ending at the death of the owner, or the owner's spouse, whichever occurs last. The owner shall elect the term to be reserved.

SEC. 9. GENERAL MANAGEMENT PLAN.

Not later than 3 complete fiscal years after the date of enactment of this Act, the Secretary shall develop and transmit a general management plan for the park to the Committee on Interior and Insular Affairs of the United States House of Representatives and to the Committee on Energy and Natural Resources of the United States Senate.

SEC. 10. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out this Act.

Mr. SIMON. Mr. President, I move that the Senate concur in the amendment of the House.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

Mr. SIMON. Mr. President, I move to reconsider the vote.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

CONVEYANCE OF CERTAIN LAND

Mr. SIMON. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 1770.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 1770) entitled "An Act to convey certain surplus real property located in the Black Hills National Forest to the Black Hills Workshop and Training Center, and for other purposes", do pass with the following amendment:

Strike out all after the enacting clause, and insert:

SECTION 1. CONVEYANCE OF LAND TO BLACK HILLS WORKSHOP AND TRAINING CENTER, INC.section 1. conveyance of land to black hills workshop and training center, inc.

(A) IN GENERAL.—Notwithstanding the Federal property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.) and any other law which requires that property of the United States be used for a particular purpose, the Administrator of General Services (hereinafter in this section referred to as the "Administrator") shall convey to the Black Hills Workshop and Training Center, Inc., of Rapid City, South Dakota (hereinafter in this section referred to as the "Center"), all right, title, and interest of the United States in certain property under the control of the General Services Administration and described in subsection (b).

(b) PROPERTY DESCRIBED.—The property referred to in subsection (a) is real property located in section 4, T.1N., R. 7E, BHM, Rapid City, Pennington County, South Dakota, and consists of that portion of Lot 3 that has been determined to be excess property and one and one-half acres of Lot 2 from the southern boundary to a line 200 feet north of the southern boundary, as depicted on a map prepared by Fisk Engineering Inc., and approved by the Forest Service on October 2, 1990.

(c) TERMS.—A conveyance of property under this section shall be—

(1) by quitclaim deed;

(2) completed by the Administrator by as soon as practicable after receipt by the Administrator, by not later than 120 days after the date of the enactment of this Act, of payment in an amount equal to the fair market value of the property, as that value is established by an independent appraisal obtained by the Administrator under subsection (d); and

(3) subject to such other terms and conditions as the Administrator determines to be appropriate.

(d) APPRAISAL.—The Administrator shall obtain an independent appraisal of the property required to be conveyed under this section by not later than 60 days after the date of the enactment of this Act.

(e) PROCEEDS FROM DISPOSITION OF PROPERTY.—Funds received as payment for the property shall be treated as proceeds from a sale of surplus property.

Mr. SIMON. Mr. President, I ask unanimous consent that the Senate concur in the amendment of the House.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SIMON. Mr. President, I move to reconsider the vote by which the amendment was concurred in.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

CALENDAR

Mr. SIMON. Mr. President, I ask unanimous consent that the Senate proceed, en bloc, to the immediate consideration of Calendar Nos. 516, 579, and 583, that the committee amendments, where appropriate, be agreed to, that the bills be deemed read three times, passed; and the motion to reconsider the passage of these measures be laid upon the table, en bloc; further that the consideration of these items appear individually in the RECORD; and any statements appear at the appropriate place.

The PRESIDING OFFICER. Without objection, it is so ordered.

INCARCERATED WITNESS FEES ACT

The Senate proceeded to consider the bill (H.R. 2324) to amend title 28, United States Code, with respect to witness fees, which had been reported from the Committee on the Judiciary, with amendments, as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets and the parts of the bill intended to be inserted are shown in italics.)

H.R. 2324

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Incarcerated Witness Fees Act of 1991".

SEC. 2. ELIMINATION OF WITNESS FEES FOR INCARCERATED PERSONS.

(a) IN GENERAL.—Section 1821 of title 28, United States Code, is amended by adding at the end the following:

["(f) An incarcerated person (other than a witness detained pursuant to section 3144 of title 18) shall be ineligible to receive the fees or allowances provided by this section.".]

(f) Any witness who is incarcerated at the time that his or her testimony is given (except for a witness to whom the provisions of section 3144 of title 18 apply) may not receive fees or allowances under this section, regardless of whether such a witness is incarcerated at the time he or she makes a claim for fees or allowances under this section.

(b) CONFORMING AMENDMENT.—Section 1821(d)(1) of title 28, United States Code, is amended by striking "(other than a witness who is incarcerated)".

(c) TECHNICAL AMENDMENT.—Section 1821(d)(4) of title 28, United States Code, is amended by striking "3149" and inserting "3144".

(d) EFFECTIVE DATE.—The amendments made by this section shall be effective on and after the date of the enactment of this act and shall apply to any witness who testified before such date and has not received any fee or allowance under section 1821 of title 28, United States Code, relating to such testimony.

The bill (H.R. 2324) as amended, was deemed read the third time and passed.

MILITARY ORDER OF WORLD WARS, INCORPORATED

The bill (S. 1578) to recognize and grant a Federal Charter to the Military Order of World Wars was considered, ordered to be engrossed for a third reading, was deemed read the third time, and passed, as follows:

S. 1578

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. FEDERAL CHARTER.

The Military Order of the World Wars, a nonprofit corporation organized under the laws of the District of Columbia (hereinafter in this Act referred to as the "corporation"), is recognized as such and is granted a Federal charter.

SEC. 2. OBJECTS AND PURPOSES OF CORPORATION.

The objects and purposes of the corporation are those provided in its articles of incorporation and shall include the following:

(1) Promoting military service associations.

(2) Promoting patriotic education and military, naval, and air science.

(3) Defending the honor and integrity of the Federal Government and the Constitution.

(4) Fostering fraternal relations among all branches of the armed forces.

(5) Encouraging the adoption of a suitable policy of national security.

(6) Encouraging the commemoration of military service and the establishment of war memorials.

SEC. 3. NONDISCRIMINATION.

In establishing the conditions of membership in the corporation and in determining the requirements for serving on the board of directors or as an officer of the corporation, the corporation may not discriminate on the basis of race, color, religion, sex, handicap, age, or national origin.

SEC. 4. RESTRICTIONS.

(a) LOANS.—The corporation may not make any loan to any officer, director, or employee of the corporation.

(b) STOCK.—The corporation shall have no power to issue any shares of stock or to declare or pay any dividends.

(c) CONGRESSIONAL APPROVAL.—The corporation shall not claim congressional approval or the authorization of the Federal Government for any of its activities.

SEC. 5. AUDIT OF FINANCIAL TRANSACTIONS.

The first section of the Act entitled "An Act to provide for audit of accounts of private corporations established under Federal law", approved August 30, 1964 (36 U.S.C. 1101), is amended by adding at the end thereof the following:

"(75) The Military Order of World Wars.".

SEC. 6. ANNUAL REPORT.

The corporation shall report annually to the Congress concerning the activities of the corporation during the preceding fiscal year. Such annual report shall be submitted at the same time as the report of the audit required by section 5 of this Act. The report shall not be printed as a public document.

SEC. 7. TAX-EXEMPT STATUS.

The corporation shall maintain its status as an organization exempt from taxation as provided in the Internal Revenue Code of 1986. If the corporation fails to maintain such status, the charter granted by this Act shall expire.

SEC. 8. TERMINATION.

The charter granted by this Act shall expire if the corporation fails to comply with—

(1) any restriction or other provision of this Act,

(2) any provision of its bylaws or articles of incorporation, or

(3) any provision of the laws of the District of Columbia.

ADMINISTRATIVE PROCEDURE TECHNICAL AMENDMENTS ACT

The bill (H.R. 2549) to make technical corrections to chapter 5 of title 5, United States Code was considered, ordered to be engrossed for a third reading, was deemed read the third time, and passed.

Mr. GRASSLEY. Mr. President, as the sponsor of S. 971, which ultimately was enacted into the Administrative Dispute Resolution Act of 1990, I rise to make several points regarding the legislative intent behind the passage of this act.

As I stated during the Senate's consideration of this legislation, the Administrative Dispute Resolution Act of 1990 is designed to encourage agencies and private parties to use ADR methods. It is intended to supplement—not replace or limit—existing dispute resolution practices and procedures. By enhancing the Government's ability to resolve a dispute effectively, my colleagues and I believed we were making it easier for agencies to use ADR techniques, where appropriate, in resolving the complex legal issues that now face them.

There are apparently some who believe that the Congress achieved precisely the opposite result. I am told by those who dwell in the arcane world of Government contracts that the Act is being interpreted as making it more difficult to resolve contract claims valued at less than $50,000. Under the terms of section 605(c) of the Contract Disputes Act of 1978, a contractor is required to certify only those claims submitted to the Government in excess of $50,000. A new section, section 605(d), was added by the Administrative Dispute Resolution Act of 1990, which appears to require that when using an ADR technique a contractor must certify all claims, regardless of their dollar amount.

The problem with this interpretation of the ADRA is that contractors perceive the certification requirement as needlessly exposing them to criminal penalties if they, in any way, present a claim that is not 100 percent in accordance with the Defense Contract Audit Agency's accounting standards. Given a choice between using ADR or proceeding with the traditional means of resolving contract disputes which do not require claim certification, the contractor will choose the latter method. Accordingly, if a contractor has a contract claim for less than $50,000 and is required to provide a certification only if he elects to use an ADR technique, he is likely to decline the opportunity.

If the statutory analysis stopped here, then I would have to agree that the Administrative Dispute Resolution Act does in fact achieve this anomalous result. However, common sense tells us that the foregoing interpretation goes too far, and is contrary to the ADRA's overreaching intent to reduce procedural formality. The text of the ADRA, along with a reading of its legislative history, also compels a different interpretation. Section 605(d) states that, when using an ADR technique to resolve a contract claim, all the provisions of the ADRA apply. The ADRA (section 4, four, new Administrative Procedures Act section 582(c)) states explicitly: "Alternative means of dispute resolution authorized under this subchapter are voluntary procedures which supplement rather than limit other available agency dispute resolution techniques."

When discussing the rationale for the foregoing provision in the ADRA, the Senate report that accompanied S. 971 states on page 10 that:

[T]his section * * * make[s] clear that the intent of the Act is to promote ADR methods as a supplement to already existing agency dispute resolution procedures. The provisions of the Act are not meant to interfere with or limit any procedures or practices already in use. The Tennessee Valley Authority (TVA) contacted the Subcommittee to express their concern that certain provisions of the Act, particularly those concerning arbitration, would limit the TVA's existing authority to arbitrate. This language in the Act is intended to allay that concern.

The ADRA's legislative history provides additional support for this position. During consideration of the bill, Senator LEVIN, chairman of the Governmental Affairs Subcommittee on Oversight of Government Management which held a hearing on the ADRA, rose in support of the ADRA and, in relevant part, stated:

Federal agencies can currently engage in many ADR techniques such as mediation and mini-trials without express authorization by statute or regulations.

* * * * *

And, I might add, it [the ADRA] is not intended * * * in any way to interfere with ongoing ADR programs.

* * * * *

Again, ADR is not aimed at endrunning established government practice, but is aimed at enhancing, where appropriate, the government's ability to effectively resolve a dispute.

These remarks can be found on page S18087 in the CONGRESSIONAL RECORD of October 24, 1990. Echoing this interpretation are remarks I made, which can be found on page S18090 of the same edition of the CONGRESSIONAL RECORD, in which I note:

For those agencies that have already experimented successfully with ADR—and our hearing record demonstrates these successes—nothing in S. 971 will cut back on their existing authority. Each agency will promulgate its own rules, after taking public comment, to fit ADR into the array of current procedures. Thus the firm statutory foundation provided by S. 971 will be shaped to fit the details of agency programs and disputes.

The ADRA has no effect on the ADR procedures in effect prior to the ADRA's passage, or on those which agencies understate pursuant to authority other than the ADRA. It is only in those cases where the authority of the ADRA is exercised that a certifi-

cation is required for contract claims less than $50,000. Mr. President, my colleagues and I feel strongly that Federal agencies should promulgate regulations that are consistent with this interpretation of the ADRA because it achieves the result the Act was intended to achieve—making it easier, not harder, to resolve disputes through the use of ADR techniques.

This interpretation also makes good sense as a matter of public policy. First, for those expressing a concern about the need for a certification requirement to protect the public from fraudulent claims by unscrupulous contractors, I note the following trilogy of statutes under which such people can be brought to justice: 18 U.S.C. 287—making or presenting a false or fraudulent claim against the United States; 18 U.S.C. 1001—making a false statement against the United States; 18 U.S.C. 1341—devising any scheme to obtain money or defraud the U.S. Government that involves the U.S. Postal Service. Second it achieves the basic aim of the ADRA, making it easier to use less formal methods to resolve disputes. Third, after reading the act in its entirety, the true intent of the Congress, and hence the proper interpretation of the ADRA, is clear. The ADR merely supplements the authority of Federal agencies to use ADR techniques. Therefore, the ADR Act should not be read as imposing a new certification requirement for all contract claims under $50,000.

RELATIVE TO THE CENTRAL JUDICIAL DISTRICT OF CALIFORNIA

Mr. SIMON. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 3795, a bill to establish three divisions in the Central Judicial District of California, just received from the House, that the bill be deemed read three times, passed and the motion to reconsider laid upon the table; further that any statements relating to this measure be inserted in the RECORD at the appropriate place.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SEYMOUR. Mr. President, I am extremely pleased that the Senate is taking quick action on H.R. 3795, which would establish three divisions in the Central Judicial District of California, and bring a Federal court to Riverside and San Bernardino Counties—California's inland empire.

It's no secret that California's population exploded in the past decade. One could not help but see this dramatic change in the inland empire. Ten years ago, the freeways that stretched from Los Angeles through the inland desert cut across sparsely populated orange groves, cattle and horse ranches, and uninhabited desert. Today, it is a much different picture: business districts and residential communities cover what was once barren land—a new, modern suburb of a vast southern California metropolis.

With this development, the population of southern California shifted inland. In the last decade, the population of San Bernardino County more than doubled, and the population of Riverside County increased by more than 75 percent. Today, the combined population is more than 2.6 million.

The inland empire's population growth isn't expected to end anytime soon. In fact, the populations of Riverside and San Bernardino Counties are expected to increase by 70 percent. By the year 2005, the inland empire will be home to more than 4.4 million Californians.

What the residents of the inland empire are in urgent need of is easy, local access to Federal judicial services. The Central Judicial District of California is designed to serve a predominantly coastal population, and has not adjusted to southern California's inland growth. Today, if inland empire residents have to go to Federal court, they must drive to either Los Angeles or Orange County. This is easier said than done. Southern California's overall population growth has resulted in a commuter's nightmare of highway gridlock. The more than 50 miles it takes to travel from the inland empire to Los Angeles or Orange County, and back again, can take as long as 6 hours. Absent adequate Federal judicial services in the region, inland empire residents will be forced to endure an increasingly inefficient and unreasonable waste of their time.

H.R. 3795 is a simple, cost-effective answer to the current and future population realities of southern California, particularly in the inland empire. Our federal court system must grow and respond to demographic trends to ensure that all Americans have ready access to quality Federal judicial services and facilities. For the present and future residents of the inland empire, this legislation is sorely needed.

Mr. President, H.R. 3795 has strong, bipartisan support among my friends and colleagues within the California congressional delegation. In particular, I wish to commend the bipartisan leadership of the inland empire congressional delegation, Mr. BROWN, Mr. LEWIS and Mr. MCCANDLESS. They were the original cosponsors of this legislation and they worked diligently to steer this legislation through expeditiously. I also would like to commend and extend my thanks to Chief Judge Manuel Real of the Central Judicial District of California. An extraordinary public servant, Judge Real has been a tireless and eloquent advocate of this legislation.

Finally, I thank my colleague from California, Senator CRANSTON, and the distinguished chairman and ranking member of the Judiciary Committee, Senator BIDEN and Senator THURMOND, for their exceptional leadership and assistance on this matter. It was a pleasure to work with them so that the Senate could take prompt action on an issue of great importance to the residents of California's inland empire.

TECHNICAL AND MISCELLANEOUS CIVIL SERVICE AMENDMENTS ACT

Mr. SIMON. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 526, H.R. 2850, the Federal Pay Comparability Act.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 2850) to make technical and conforming changes in title 5, United States Code, and the Federal Employees Pay Comparability Act of 1990, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Veterans' Affairs with an amendment to strike out all after the enacting clause and inserting in lieu thereof the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Technical and Miscellaneous Civil Service Amendments Act of 1992".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

SEC. 2. AMENDMENTS TO TITLE 5, UNITED STATES CODE.

Title 5, United States Code, is amended—

(1) in the analysis for part II by striking, in the item relating to chapter 12, "Individual Right of Action" and inserting "Employee Right of Action";

(2) by striking the heading for former section 1209 (the text of which was redesignated as sections 1205 and 1206 by paragraphs (9) and (10), respectively, of section 3(a) of the Whistleblower Protection Act of 1989 (Public Law 101–12; 103 Stat. 18));

(3) by striking the heading for former section 1204 (which was redesignated as section 1211(b) by section 3(a)(6) of the Whistleblower Protection Act of 1989 (Public Law 101–12; 103 Stat. 17));

(4) in section 3105 by striking "section 3105," and inserting "sections 3105,";

(5) in section 2302(b)(8)(B) by striking "Special Counsel of the Merit Systems Protection Board," and inserting "Special Counsel,";

(6) in section 2304(b) by striking "(b) the" and inserting "(b) The";

(7) in section 3104(a)—

(A) by striking "(not to exceed 517)"; and

(B) by amending the second sentence to read as follows: "Any such position may be established by action of the Director or, under such standards and procedures as the Office prescribes (including procedures under which the prior approval of the Director may be required), by agency action.";

(8) in section 3109 by adding at the end thereof the following new subsections:

"(d) The Office of Personnel Management shall prescribe regulations necessary for the administration of this section. Such regulations shall include—

"(1) criteria governing the circumstances in which it is appropriate to employ an expert or consultant under the provisions of this section;

"(2) criteria for setting the pay of experts and consultants under this section; and

"(3) provisions to ensure compliance with such regulations.

"(e) Each agency shall report to the Office of Personnel Management on an annual basis with respect to—

"(1) the number of days each expert or consultant employed by the agency during the period was so employed; and

"(2) the total amount paid by the agency to each expert and consultant for such work during the period.";

(9) by amending section 3152 to read as follows:

"§3152. Limitation on pay

"Members of the FBI–DEA Senior Executive Service shall be subject to the limitation under section 5307.";

(10) in section 3323(b)(1) by striking "annuitant as defined by section 8331 of this title" and inserting "annuitant, as defined by section 8331 or 8401,";

(11) in section 3324—

(A) by amending the heading to read as follows:

"§3324. Appointments to positions classified above GS–15";

and

(B) in subsection (a) by amending paragraph (1) to read as follows:

"(1) to which appointment is made by the Chief Judge of the United States Tax Court;";

(12) in section 3325(b) by striking "section 3104(a)(7) of this title" and inserting "section 3104(c)";

(13)(A) by striking section 3342; and

(B) in the table of sections for chapter 33 by striking the item relating to section 3342;

(14) by amending the heading for section 3373 to read as follows:

"§3373. Assignment of employees to State or local governments";

(15) in section 3401(1)(iv) by striking "Virgin Island" and inserting "Virgin Islands";

(16) in section 3594(c)(1)(A) by striking "5108,," and inserting "5108,";

(17) in section 4109 by striking subsection (d);

(18) in section 4302(a) by striking the semicolon at the end and inserting a period;

(19) in section 4505a—

(A) in subsection (b)(2) by striking "chapter 12 or under" and inserting "chapter 12, chapter 71, or";

(B) in subsection (c) by inserting "of Personnel Management" after "Office"; and

(C) by striking subsection (d) and inserting the following:

"(d) The preceding provisions of this section shall be applicable with respect to any employee to whom subchapter III of chapter 53 applies, and to any category of employees provided for under subsection (e).

"(e) At the request of the head of an Executive agency, the President may authorize the application of subsections (a) through (c) with respect to any category of employees within such agency who would not otherwise be covered by this section.";

(20) in the heading for subchapter III of chapter 45 by striking "OFFICER" and inserting "OFFICERS";

(21) by amending section 4521 to read as follows:

"§4521. Definition

"For the purpose of this subchapter, the term 'law enforcement officer' means—

"(1) a law enforcement officer within the meaning of section 5541(3) and to whom the provisions of chapter 51 apply;

"(2) a member of the United States Secret Service Uniformed Division;

"(3) a member of the United States Park Police;

"(4) a special agent in the Diplomatic Security Service;

"(5) a probation officer (referred to in section 3672 of title 18); and

"(6) a pretrial services officer (referred to in section 3153 of title 18).";

(22) in the table of sections for chapter 51 by striking the item relating to section 5108 and inserting the following:

"5108. Classification of positions above GS–15.";

(23) in section 5108(a)(2) by striking the semicolon at the end and inserting a period;

(24) in the table of sections for chapter 53—

(A) in the item relating to section 5379 by striking "repayment." and inserting "repayments."; and

(B) by striking "Sec." immediately before the item relating to section 5391;

(25) in section 5302—

(A) in paragraph (1) by amending subparagraph (C) to read as follows:

"(C) chapter 74 of title 38, relating to the Veterans Health Administration (other than a position subject to section 7451 of title 38);"; and

(B) in paragraph (8)—

(i) in subparagraph (A) by striking "and" at the end; and

(ii) by adding after subparagraph (B) the following:

"(C) in the case of an employee receiving a retained rate of basic pay under section 5363, the rate of basic pay payable under such section; and";

(26) in section 5304—

(A) in subsection (a)(3)—

(i) by striking "Subject to paragraphs (4) and (5)," and inserting "Subject to paragraph (4),", and by striking "a comparative payment" and inserting "a comparability payment";

(ii) in subparagraph (H) by inserting "and" after the semicolon; and

(iii) in subparagraph (I) by striking the semicolon and inserting a period;

(B) in subsection (d)(1)(A) by inserting "(disregarding any described in section 5302(8)(C))" after "General Schedule", and by striking "annual";

(C) in subsection (e)—

(i) in paragraph (1) by inserting the second sentence the following: "However, members under subparagraph (A) may be paid expenses in accordance with section 5703."; and

(ii) in paragraph (2)(A)(ii) by striking "annual survey" and inserting "surveys of pay localities", and by striking "industries," and inserting "industries";

(D) in subsection (g) by amending paragraph (2) to read as follows:

"(2) The applicable maximum under this subsection shall be level III of the Executive Schedule for—

"(A) positions under subparagraphs (A)–(E) of subsection (h)(1); and

"(B) any positions under subsection (h)(1)(F) which the President may determine.";

(E) in subsection (h)—

(i) in paragraph (1)—

(I) by amending subparagraph (F) to read as follows:

"(F) a position within an Executive agency not covered under the General Schedule or any of the preceding subparagraphs, the rate of basic pay for which is (or, but for this section, would be) no more than the rate payable for level IV of the Executive Schedule;";

(II) in clause (i) by striking "or" at the end;

(III) in clause (ii) by striking the period at the end and inserting "; or"; and

(IV) by adding at the end the following:

"(iii) a position to which subchapter II applies (relating to the Executive Schedule).";

(ii) in paragraph (2) by adding at the end the following:

"(C) Notwithstanding subsection (c)(4) or any other provision of law, but subject to paragraph (3), in the case of a category with positions that are in more than 1 Executive agency, the President may, on his own initiative, provide that each employee who holds a position within such category, and in the locality involved, shall be entitled to receive comparability payments."; and

(iii) in paragraph (3) by amending subparagraph (B) to read as follows:

"(B) shall take effect, within the locality involved, on the first day of the first applicable pay period commencing on or after such date as the President designates (except that no date may be designated which would require any retroactive payments), and shall remain in effect through the last day of the last applicable pay period commencing during that calendar year;";

(27) in section 5306(a)(1)(B) by striking "166b–3" and inserting "166b–3a";

(28) in section 5314 by striking each of the following: "Under Secretary of Education.", "Under Secretary of Health and Human Services.", "Under Secretary of the Interior.", and "Under Secretary of Housing and Urban Development.";

(29) in section 5332 by amending subsection (a) to read as follows:

"(a)(1) The General Schedule, the symbol for which is 'GS', is the basic pay schedule for positions to which this subchapter applies. Each employee to whom this subchapter applies, except an employee covered by the performance management and recognition system established under chapter 54, is entitled to basic pay in accordance with the General Schedule.

"(2) The General Schedule is a schedule of annual rates of basic pay, consisting of 15 grades, designated 'GS–1' through 'GS–15', consecutively, with 10 rates of pay for each such grade. The rates of pay of the General Schedule are adjusted in accordance with section 5303.";

(30) in section 5347(g)—

(A) by striking "(g) Members" and inserting "(g)(1) Except as provided in paragraph (2), members";

(B) by striking the second sentence; and

(C) by adding at the end the following:

"(2) The position of Chairman shall be considered to be a Senior Executive Service position within the meaning of section 3132(a), and shall be subject to all provisions of this title relating to Senior Executive Service positions, including section 5383.";

(31) in section 5371(b)—

(A) by striking "chapter 73" and inserting "chapter 74"; and

(B) by inserting "subchapter V of chapter 55," after "61," each place it appears;

(32) in section 5372(c) by striking "shall," and inserting "shall";

(33) in section 5375(2) by striking "GS–8," and inserting "GS–8";

(34) in section 5377—
(A) in subsection (a)(2)—
(i) in subparagraph (C) by striking "and" at the end;
(ii) in subparagraph (D) by striking the period at the end and inserting a semicolon; and
(iii) by adding after subparagraph (D) the following:
"(E) a position established under section 3104; and
"(F) a position in a category as to which a designation is in effect under subsection (i).''; and
(B) by adding at the end the following:
"(i)(1) For the purpose of this subsection, the term 'position' means the work, consisting of the duties and responsibilities, assignable to an employee, except that such term does not include any position under subsection (a)(2)(A)–(E).
"(2) At the request of an agency head, the President may designate 1 or more categories of positions within such agency to be treated, for purposes of this section, as positions within the meaning of subsection (a)(2).";
(35) in section 5383 by amending subsection (b) to read as follows:
"(b) Members of the Senior Executive Service shall be subject to the limitation under section 5307.";
(36) in subchapter IX of chapter 53 by striking the matter after the subchapter heading and before the heading for section 5391;
(37) in section 5401(1) by striking "(a)" and inserting "(A)", and by striking "(b)" and inserting "(B)";
(38) in section 5403(d) by striking "section 5305" and inserting "section 5303";
(39) in section 5519 by striking "section 6323(c) or (d) of this title" and inserting "section 6323(b) or (c)";
(40) in section 5541—
(A) in paragraph (1) by striking "and" at the end;
(B) in paragraph (2) by striking the period at the end and inserting "; and"; and
(C) by adding at the end the following:
"(3) 'law enforcement officer' means an employee who—
"(A) is a law enforcement officer within the meaning of section 8331(20) or 8401(17);
"(B) in the case of an employee who holds a supervisory or administrative position and is subject to subchapter III of chapter 83, but who does not qualify to be considered a law enforcement officer within the meaning of section 8331(20), would so qualify if such employee had transferred directly to such position after serving as a law enforcement officer within the meaning of such section;
"(C) in the case of an employee who holds a supervisory or administrative position and is subject to chapter 84, but who does not qualify to be considered a law enforcement officer within the meaning of section 8401(17), would so qualify if such employee had transferred directly to such position after performing duties described in section 8401(17) (A) and (B) for at least 3 years; and
"(D) in the case of an employee who is not subject to subchapter III of chapter 83 or chapter 84—
"(i) holds a position that the Office of Personnel Management determines would satisfy subparagraph (A), (B), or (C) if the employee were subject to subchapter III of chapter 83 or chapter 84; or
"(ii) is a special agent in the Diplomatic Security Service.";
(41) in section 5542—
(A) in subsection (a)(4)—
(i) by striking "officer (within the meaning of section 8331(20) or 8401(17))," and inserting "officer,"; and
(ii) by moving the indentation for the matter following subparagraph (B) 2 ems to the right; and
(B) in subsection (c) by amending the second sentence to read as follows: "In the case of an employee who would, were it not for the preceding sentence, be subject to this section, the Office of Personnel Management shall by regulation prescribe what hours shall be deemed to be hours of work and what hours of work shall be deemed to be overtime hours for the purpose of such section 7 so as to ensure that no employee receives less pay by reason of the preceding sentence.";
(42) in section 5544—
(A) in paragraphs (2) and (3) of subsection (a) by striking "2,080" each place it appears and inserting "2,087";
(B) by amending the last two sentences of subsection (a) to read as follows: "The first and third sentences of this subsection shall not be applicable to an employee who is subject to the overtime pay provisions of section 7 of the Fair Labor Standards Act of 1938. In the case of an employee who would, were it not for the preceding sentence, be subject to the first and third sentences of this subsection, the Office of Personnel Management shall by regulation prescribe what hours shall be deemed to be hours of work and what hours of work shall be deemed to be overtime hours for the purpose of such section 7 so as to ensure that no employee receives less pay by reason of the preceding sentence."; and
(C) by adding at the end the following:
"(c) The provisions of this section, including the last two sentences of subsection (a), shall apply to a prevailing rate employee described in section 5342(a)(2)(B).";
(43) in section 5547(c) by striking paragraph (3);
(44)(A) by striking section 5550;
(B) in the table of sections for chapter 55 by striking the item relating to section 5550;
(C) in section 5548(b) by striking "sections 5545(d) and 5550 of this title." and inserting "section 5545(d).";
(D) in section 6123(a)(1) by striking "5543(a)(1), 5544(a), and 5550" and inserting "5543(a)(1) and section 5544(a)"; and
(E) in section 6128—
(i) in subsection (a) by striking "5542(a), 5544(a), and 5550(2)" and inserting "5542(a) and 5544(a)"; and
(ii) in subsection (c) by striking "5544(a), 5546(a), or 5550(1)" and inserting "5544(a) or 5546(a)";
(45)(A) in subchapter VI of chapter 55 by adding at the end the following:

"§5553. Regulations

"The Office of Personnel Management may prescribe regulations necessary for the administration of this subchapter."; and
(B) in the table of sections for chapter 55 by adding after the item relating to section 5552 the following:

"5553. Regulations.";

(46) in the table of sections for chapter 57—
(A) by striking the item relating to section 5723 and inserting the following:

"5723. Travel and transportation expenses of new appointees and student trainees.";

and
(B) by adding after the item relating to section 5754 the following:

"5755. Supervisory differentials.";

(47) in the heading for section 5702 by striking "employee" and inserting "employees";
(48) in section 5723—
(A) by amending the heading to read as follows:

"§5723. Travel and transportation expenses of new appointees and student trainees";

and
(B) by striking subsection (d) and redesignating subsection (e) as subsection (d);
(49) in section 5724(a)(3)(A) by striking "Service;" and inserting "Service or as a director under section 4103(a)(8) of title 38 (as in effect on November 27, 1988);";
(50) in section 5901(a) by striking "5902)." each place it appears and inserting "5902)";
(51) in section 5948—
(A) in the first sentence of subsection (a) by striking "provisions of this section" and inserting "provisions of this section, section 5307,";•
(B) in subsection (g)(1)—
(i) by amending subparagraph (D) to read as follows:
"(D) section 5371, relating to certain health care positions;";
(ii) by striking "or" at the end of subparagraph (H);
(iii) by striking "and" at the end of subparagraph (I); and
(iv) by inserting after subparagraph (I) the following:
"(J) section 5376, relating to certain senior-level positions;
"(K) section 5377, relating to critical positions; or
"(L) subchapter IX of chapter 53, relating to special occupational pay systems; and";
(52) in section 6303(a) by amending the second sentence to read as follows: "In determining years of service, an employee is entitled to credit for all service of a type that would be creditable under section 8332, regardless of whether or not the employee is covered by subchapter III of chapter 83.";
(53) in the second sentence of section 6304(e) by striking "date of" and inserting "date";
(54) in section 7112 by redesignating subsection (a)(1) as subsection (a);
(55) in section 7113 by redesignating subsection (a)(1) as subsection (a);
(56) in section 7701(c)(1) by amending subparagraph (A) to read as follows:
"(A) in the case of an action based on unacceptable performance described in section 4303 or a removal from the Senior Executive Service for failure to be recertified under section 3393a, is supported by substantial evidence; or";
(57) in section 8331—
(A) in paragraph (1)—
(i) in subparagraph (L) by striking "section 8347(p)(1)" and inserting "section 8347(q)(1)"; and
(ii) in clause (ii) by striking "section 8347(p)(2)" and inserting "section 8347(q)(2)"; and
(B) in paragraph (7) by striking "Gallaudet College," and inserting "Gallaudet University,";
(58) in the last sentence of section 8332(b) by striking "paragraph (16)" and inserting "paragraph (16)";
(59) in section 8334(i) by redesignating the second paragraph (5) as paragraph (6);
(60) in section 8335(b) by amending the first sentence to read as follows: "A firefighter who is otherwise eligible for immediate retirement under section 8336(c) shall be separated from the service on the last day of the month in which such firefighter becomes 55 years of age or completes 20 years of service if then over that age.";
(61) in the second sentence of section 8337(a) by striking "if the employee if" and inserting "if the employee is";
(62) in section 8339 by redesignating the second subsection (o) as subsection (p);
(63) in section 8341 in subsections (b)(1) and (d) by striking "(o)," and inserting "(p),";
(64) in section 8347—
(A) by redesignating the second subsection (p) as subsection (q); and
(B) in paragraphs (1) and (2) of subsection (q) (as so redesignated) by amending subparagraph (A) of each to read as follows:

"(A) has not previously made an election under this subsection or had an opportunity to make an election under this paragraph;";

(65) in section 8421(a)(2) by adding a period at the end;

(66) in section 8423(a)(1)(B)(i) by striking "multipled" and inserting "multiplied";

(67) in section 8425(b)—

(A) by amending the first sentence to read as follows: "A member of the Capitol Police or firefighter who is otherwise eligible for immediate retirement under section 8412(d) shall be separated from the service on the last day of the month in which such member or firefighter becomes 55 years of age or completes 20 years of service if then over that age."; and

(B) in the second sentence by striking "become" and inserting "becomes";

(68) in section 8438(a)(7)(B) by striking "Federal Savings and Loan Insurance Corporation," and inserting "Federal Deposit Insurance Corporation,";

(69) in section 8440(a)(3) by inserting "section 401(k)(4)(B) of such Code and" after "subject to";

(70) in section 8440a(b)(1) by striking "subchapters III and VII of chapter 84 of this title" and inserting "this subchapter and subchapter VII";

(71) in section 8461(n)—

(A) in paragraphs (1) and (2) by amending subparagraph (A) of each to read as follows:

"(A) has not previously made an election under this subsection or had an opportunity to make an election under this paragraph;"; and

(B) in paragraph (2)(D) by striking "section 8347(p)" and inserting "section 8347(q)";

(72) in section 8478(a)(2)(B)(iii) by striking "Corporation or the Federal Savings and Loan Insurance";

(73) in the analysis for chapter 85 by adding after the item relating to section 8508 the following:

"8509. Federal Employees Compensation Account.";

(74) in section 8706 by redesignating subsection (g) as subsection (f);

(75) in section 8901—

(A) in paragraph (3)(A)(iv) by striking "section 8347(p)(2)" and inserting "section 8347(q)(2)"; and

(B) in paragraph (10)(C)(ii) by inserting a comma after "section 8341(h)";

(76) in section 8904(a) by striking "this section" each place it appears and inserting "this subsection";

(77) in section 8905—

(A) in subsection (b) by striking "this subchapter." and inserting "this chapter"; and

(B) in subsection (c)(1) by inserting a comma after "8341(h)"; and

(78) in section 8906—

(A) in subsection (b)(3) by inserting a period after "Office)"; and

(B) in subsection (c) by striking "and except" and inserting "and (except".

SEC. 3. AMENDMENTS TO THE FEDERAL EMPLOYEES PAY COMPARABILITY ACT OF 1990.

The Federal Employees Pay Comparability Act of 1990, as contained in the Treasury, Postal Service and General Government Appropriations Act, 1991 (Public Law 101–509; 104 Stat. 1427), is amended—

(1) in each of paragraphs (1) and (2) of section 109(b) (104 Stat. 1451) by striking "section 5305" and inserting "section 5303";

(2) in section 203 (104 Stat. 1456) by striking "5545(D)" and inserting "5545(d)";

(3) in section 209(a) (104 Stat. 1460)—

(A) by striking "or" at the end of paragraph (1);

(B) by striking the period at the end of paragraph (2) and inserting "; or"; and

(C) by inserting at the end the following:

"(3) any combination of classes of positions described in paragraph (1) or (2) for which the President determines a recruiting difficulty exists.";

(4) in section 302 (104 Stat. 1462)—

(A) by striking "(A) DEFINITIONS.—" and inserting "(a) DEFINITIONS.—";

(B) by redesignating the section subsection (c) as subsection (d);

(C) by redesignating subsections (d) and (e) as subsections (e) and (f), respectively; and

(D) by amending subsection (e) (as so redesignated) by striking "Code," and all that follows through the period and inserting the following: "Code (as in effect before the date of enactment of this Act), section 5305 of title 5, United States Code (as amended by section 101 of this Act), or any similar provision of law.";

(5) in section 402 (104 Stat. 1465) by striking "section 8331(20) or section 8401(17)" and inserting "section 5541(3)";

(6) in section 403(d) (104 Stat. 1465) by striking "section 303" and inserting "section 209";

(7) in section 404(a) (104 Stat. 1466) by striking "and any applicable special rate of pay under section 5305 of such title, as so amended, or any similar provision of law." and inserting "and, to the extent determined appropriate by the Office of Personnel Management, any applicable special rate of pay under section 5305 of such title, as so amended, or any similar provision of law (other than section 403).";

(8) in section 404(b) (104 Stat. 1466)—

(A) by striking "(b) Except" and inserting "(b)(1) Except";

(B) by striking "Trention" and inserting "Trenton"; and

(C) by adding at the end the following:

"(2) In the case of any area specified in paragraph (1) that includes a portion, but not all, of a county, the Office of Personnel Management may, at the request of the head of 1 or more law enforcement agencies, extend the area specified in paragraph (1) to include, for the purposes of this section, the entire county, if the Office determines that such extension would be in the interests of good personnel administration. Any such extension shall be applicable to each law enforcement officer whose post of duty is in the area of the extension."; and

(9) in section 405(a) (104 Stat. 1466) by striking "403 and 404" and inserting "403, 404, and 407".

SEC. 4. AMENDMENTS RELATING TO THE ETHICS IN GOVERNMENT ACT OF 1978.

(a) AMENDMENTS TO TITLE I OF THE ACT.—Title I of the Ethics in Government Act of 1978 (5 U.S.C. App.) is amended—

(1) in section 101(f)—

(A) in paragraph (3) by striking "whose position" and all that follows through "for GS–16" and inserting "who occupies a position classified above GS–15 of the General Schedule or, in the case of positions not under the General Schedule, for which the rate of basic pay is equal to or greater than 120 percent of the minimum rate of basic pay payable for GS–15 of the General Schedule";

(B) in paragraph (6) by striking "whose basic rate of pay" and all that follows through "GS–16" and inserting "who occupies a position for which the rate of basic pay is equal to or greater than 120 percent of the minimum rate of basic pay payable for GS–15 of the General Schedule";

(2) in section 109—

(A) in paragraph (8) by striking "who is paid" and all that follows through "Schedule" and inserting "who occupies a position for which the rate of basic pay is equal to or greater than 120 percent of the minimum rate of basic pay payable for GS–15 of the General Schedule";

(B) in paragraph (13)(B)(i) by striking "who is compensated" and all that follows through "Schedule" and inserting "who, for at least 60 days, occupies a position for which the rate of basic pay is equal to or greater than 120 percent of the minimum rate of basic pay payable for GS–15 of the General Schedule"; and

(C) in paragraph (13)(B)(ii) by striking "compensated" and all that follows through "Schedule" and inserting "who occupies a position for which the rate of basic pay is equal to or greater than 120 percent of the minimum rate of basic pay payable for GS–15 of the General Schedule".

(b) AMENDMENTS TO TITLE V.—Title V of the Ethics in Government Act of 1978 (5 U.S.C. App.) is amended—

(1) in section 501(a)(1) by striking "whose rate of basic pay is equal to or greater than the annual rate of basic pay in effect for grade GS–16 of the General Schedule under section 5332 of title 5, United States Code," and inserting "who occupies a position classified above GS–15 of the General Schedule or, in the case of positions not under the General Schedule, for which the rate of basic pay is equal to or greater than 120 percent of the minimum rate of basic pay payable for GS–15 of the General Schedule,";

(2) in section 501(a)(2) by striking "who becomes a Member or an officer or employee who is a noncareer officer or employee and whose rate of basic pay is equal to or greater than the annual rate of basic pay in effect for grade GS–16 of the General Schedule during a calendar year," and inserting "who during a calendar year becomes a Member or an officer or employee who is a noncareer officer or employee and who occupies a position classified above GS–15 of the General Schedule or, in the case of positions not under the General Schedule, for which the rate of basic pay is equal to or greater than 120 percent of the minimum rate of basic pay payable for GS–15 of the General Schedule,"; and

(3) in section 502(a) by striking "whose rate of basic pay is equal to or greater than the annual rate of basic pay in effect for grade GS–16 of the General Schedule" and inserting "who occupies a position classified above GS–15 of the General Schedule or, in the case of positions not under the General Schedule, for which the rate of basic pay is equal to or greater than 120 percent of the minimum rate of basic pay payable for GS–15 of the General Schedule".

(c) AMENDMENTS TO GIFT PROVISIONS.—Section 314(g) of the Legislative Branch Appropriations Act, 1992 (Public Law 102–90; 105 Stat. 470) is amended to read as follows:

"(g)(1) The amendments made by subsections (b) through (f) shall take effect on January 1, 1992.

"(2) The amendment made by subsection (a) shall take effect on January 1, 1993.".

SEC. 5. AMENDMENTS TO OTHER PROVISIONS OF LAW.

(a) OMNIBUS BUDGET RECONCILIATION ACT OF 1990.—The Omnibus Budget Reconciliation Act of 1990 (Public Law 101–508; 104 Stat. 1388) is amended—

(1) in section 7101(c)(2) (104 Stat. 1388–332) by striking "took effect, subject to section 7104." and inserting "took effect."; and

(2) in section 7202(n) (104 Stat, 1388–340)—

(A) in paragraph (2) by striking "section 8347(p)(1)" each place it appears and inserting "section 8347(q)(1); and

(B) in paragraph (4) by striking "section 8347(p)(2)" and inserting "section 8347(q)(2)".

(b) FEDERAL PAY COMPARABILITY ACT OF 1970.—Section 5(a) of the Federal Pay Comparability Act of 1970 (2 U.S.C. 60a–2(a)) is amended by inserting "of title 5, United States Code," after "Whenever an adjustment under section 5303".

(c) PUBLIC LAW 100–446.—Section 8(c)(2) of Public Law 100–446 (2 U.S.C. 178g(c)(2); 102 Stat.

1786) is amended by striking the second sentence.

(d) PUBLIC LAW 102–198.—Section 7(c)(4) of Public Law 102–198 (105 Stat. 1625) is amended—

(1) in subparagraph (A) by striking "2440d" and inserting "8440d"; and

(2) in subparagraph (B) by striking "subchapter III of".

(e) PUBLIC LAW 102–233.—Section 21A(b)(9)(B)(i) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(b)(9)(B)(i)), as amended by section 201 of the Resolution Trust Corporation Refinancing, Restructuring, and Improvement Act of 1991 (Public Law 102–233; 105 Stat. 1765), is amended by striking the last 3 sentences.

SEC. 6. RESTORATION OF COVERAGE OF CERTAIN FEDERAL PERSONNEL PROVISIONS TO CERTAIN VETERANS HEALTH ADMINISTRATION EMPLOYEES.

(a) IN GENERAL.—Section 7511(b) of title 5, United States Code, is amended—

(1) by amending paragraph (7) to read as follows:

"(7) whose position is within the Central Intelligence Agency or the General Accounting Office;";

(2) in paragraph (8) by striking "or" after the semicolon;

(3) in paragraph (9) by striking "title." and inserting "title; or"; and

(4) by adding at the end the following:

"(10) who holds a position within the Veterans Health Administration which has been excluded from the competitive service by or under a provision of title 38, unless such employee was appointed to such position under section 7401(3) of such title.".

(b) APPLICABILITY.—(1) The amendments made by subsection (a) shall apply with respect to any personnel action taking effect on or after the date of enactment of this Act.

(2) In the case of an employee or former employee of the Veterans Health Administration (or predecessor agency in name)—

(A) against whom an adverse personnel action was taken before the date of enactment of this Act,

(B) who, as a result of the enactment of the Civil Service Due Process Amendments (5 U.S.C. 7501 note), became ineligible to appeal such action to the Merit Systems Protection Board,

(C) as to whom that appeal right is restored as a result of the enactment of subsection (a), or would have been restored but for the passage of time, and

(D) who is not precluded, by section 7121(e)(1) of title 5, United States Code, from appealing to the Merit Systems Protection Board,

the deadline for bringing an appeal under section 7513(d) or section 4303(e) of such title with respect to such action shall be the latter of—

(i) the 60th day after the date of enactment of this Act; or

(ii) the deadline which would otherwise apply if this paragraph had not been enacted.

SEC. 7. RETROACTIVE PERFORMANCE AWARDS.

(a) IN GENERAL.—Section 7(b) of the Thrift Savings Plan Technical Amendments Act of 1990 (5 U.S.C. 3392 note; Public Law 101–335) is amended by adding at the end thereof the following new paragraph:

"(3) RETROACTIVE PERFORMANCE AWARDS.—If an individual elects under paragraph (2) to continue to be subject to performance awards, the head of the agency in which such individual is serving shall determine whether to grant retroactive performance awards for any fiscal years prior to fiscal year 1991 to such individual, and the amount of any such awards, without regard to the provisions of subsection (b) of section 5383 of title 5, United States Code, and subsections (b) and (c) of section 5384 of such title. Before granting an award, the head of the agency shall make a written determination that the individual's performance during the fiscal year for which the award is given was at least fully successful, and shall consider the recommendation of the agency's performance review board with respect to the award. No such award for performance during any fiscal year may be less than 5 percent nor more than 15 percent of the individual's rate of basic pay as of the end of such fiscal year.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall be effective as if enacted as a part of section 7 of the Thrift Savings Plan Technical Amendments Act of 1990.

SEC. 8. MISCELLANEOUS PROVISIONS.

(a) ELIMINATION OF DUPLICATIVE AMENDMENTS MADE BY THE DEFENSE ACQUISITION WORKFORCE IMPROVEMENT ACT.—Subsections (i) and (j) of section 1206 of the Defense Acquisition Workforce Improvement Act, as contained in the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101–510; 104 Stat. 1662, 1663), are repealed, and title 5, United States Code, shall read as if such subsections had not been enacted.

(b) PROVISIONS RELATING TO COMPARABILITY PAYMENTS IN 1994 AND 1995.—Notwithstanding section 5304 of title 5, United States Code, for purposes of any comparability payments scheduled to take effect under such section during calendar years 1994 and 1995, respectively—

(1) the report required by subsection (d)(1) of such section may be submitted not later than 1 month before the start of the calendar year for purposes of which it is prepared; and

(2) the surveys conducted by the Bureau of Labor Statistics for use in preparing any such report may be other than annual surveys, and shall, to the greatest extent practicable, be completed not later than 4 months before the start of the calendar year for purposes of which the surveys are conducted.

SEC. 9. EFFECTIVE DATES.

(a) IN GENERAL.—Except as otherwise provided in this section, this Act and the amendments made by this Act shall take effect as of the date of enactment of this Act.

(b) EXCEPTIONS.—(1) The amendment made by section 4(c) shall be effective as of December 31, 1991.

(2) The amendments made by section 5(d) shall be effective as of December 9, 1991.

(3) The amendments made by sections 2(13) and 2(17) shall be effective as of October 1, 1991.

(4) The amendments made by sections 2(11), 2(19), 2(29), and 2(38) shall be effective as of May 4, 1991.

(5) The amendments made by section 2(25) shall be effective as of February 3, 1991.

(6) The provisions of section 8(a) and the amendments made by sections 2(57)(A), 2(60), 2(64), 2(67), 2(71), 2(75)(A), 3(1), 3(4), 3(6), and 5(a) shall be effective as of November 5, 1990.

(7) The amendment made by section 2(52) shall be effective as of January 1, 1989, except that no amount shall become payable, as a result of the enactment of such amendment, under—

(A) subchapter VI of chapter 55 of title 5, United States Code, based on a separation that takes effect or an election that is made before the date of enactment of this Act; or

(B) section 5551(b) of title 5, United States Code, which is attributable to an individual's being excepted from subchapter I of chapter 63 of such title before the date of enactment of this Act.

(8) The amendment made by section 2(69) shall be effective as of November 10, 1988.

(9) The amendments made by sections 2(40), 2(41), 2(42), 2(43), and 3(5) shall be effective as of the first day of the first applicable pay period beginning on or after the date of enactment of this Act.

(10) The amendments made by section 2(28) shall be effective as of the first day of the first applicable pay period beginning on or after November 5, 1990.

(11) The amendment made by section 2(49) shall apply with respect to a separation that takes effect on or after the date of enactment of this Act.

(12) The amendment made by section 5(e) shall apply with respect to any action (described in subclause (I) or (II) of the provisions struck by such amendment) occurring on or after the date of enactment of this Act.

AMENDMENT NO. 2914

(Purpose: To provide for notification to Congress before extending certain comparability payments, and to express the sense of the Congress relating to pay provisions for law enforcement officers, and for other purposes)

Mr. SIMPSON. Mr. President, I send an amendment to the desk on behalf of Senator ROTH and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Wyoming [Mr. SIMPSON], for Mr. ROTH, proposes an amendment numbered 2914.

Mr. SIMPSON. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 45, line 5, strike out "comparability payments." and insert in lieu thereof "comparability payments. No later than 30 days before an employee receives comparability payments under this subparagraph, the President or the President's designee shall submit a detailed report to the Congress justifying the reasons for the extension, including consideration of recruitment and retention rates and the expense of extending locality pay."

On page 50, insert between lines 10 and 11 the following new subsection:

(D) SENSE OF THE CONGRESS RELATING TO LAW ENFORCEMENT OFFICER PROVISIONS.—It is the Sense of the Congress that—

(1) the provisions of section 5541(3) of title 5, United States Code (as added by section 2(40)(c) of this Act)—

(A) are enacted only for the purposes of pay and not for the purposes of retirement;

(B) do not reflect any intent of the Congress to change retirement eligibility standards for law enforcement officers; and

(2) law enforcement officers in primary positions have different retirement eligibility standards than employees in supervisory or administrative positions because of the different requirements in their responsibilities.

The PRESIDING OFFICER. If there is no objection, the amendment to the committee amendment is agreed to.

So the amendment (No. 2914) was agreed to.

The committee amendment, as amended, was agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the amendments and third reading of the bill.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read a third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill pass?

So the bill (H.R. 2850), as amended, was passed.

Mr. SIMON. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

MESSAGES FROM THE HOUSE

At 3:36 p.m., a message from the House of Representatives announced that the House agrees to the amendment of the Senate to the bill (H.R. 2926) to amend the act of May 17, 1954, relating to the Jefferson National Expansion Memorial to authorize increased funding for the East Saint Louis portion of the memorial, and for other purposes.

The message also announced that the House has passed the following bills, each with amendments, in which it requests the concurrence of the Senate:

S. 544. An act to amend the Food, Agriculture, Conservation and Trade Act of 1990 to provide protection to animal research facilities from illegal acts, and for other purposes; and

S. 2322. An act to increase the rate of compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for the survivors of certain disabled veterans.

The message further announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 1241. An act to amend title 18, United States Code, to provide penalties for willful refusal to pay child support, and for other purposes;

H.R. 3486. An act to amend the Marine Mammal Protection Act of 1972 to provide for examination of the health of marine mammal populations and for effective coordinated response to strandings and the unusual mortality events involving marine mammals;

H.R. 3837. An act to make certain changes to improve the administration of the Medicare program, to reform customs overtime pay practices, to prevent the payment of Federal benefits to deceased individuals, and to require reports on employers with underfunded pension plans;

H.R. 4209. An act to amend the act entitled "An Act conferring jurisdiction on certain courts of the United States to hear and render judgments in connection with certain claims of the Cherokee Nation of Oklahoma", approved December 23, 1982;

H.R. 4906. An act to amend the Consolidated Farm and Rural Development Act to establish a program to aid beginning farmers and ranchers and to improve the operation of the Farmers Home Administration and to amend the Farm Credit Act of 1971, and for other purposes;

H.R. 5193. An act to improve the delivery of health-care services to eligible veterans and to clarify the authority of the Secretary of Veterans Affairs;

H.R. 5194. An act to amend the Juvenile Justice and Delinquency Prevention Act of 1974 to authorize appropriations for fiscal years 1993, 1994, 1995, and 1996, and for other purposes;

H.R. 5237. An act to amend the Rural Electrification Act of 1936 to improve the provision of electric and telephone service in rural areas, to establish a grant program to improve the provision of health care services and educational services in rural areas by enabling providers of such services to obtain access to modern interactive telecommunications systems, and for other purposes;

H.R. 5739. An act to reauthorize the Export-Import Bank of the United States;

H.R. 5350. An act to establish the Great Lakes Fish and Wildlife Tissue Bank;

H.R. 5475. An act providing policies with respect to approval of bills providing for patent term extensions, and to extend certain patents; and

H.R. 5619. An act to reorganize technically chapter 36 of title 38, United States Code, and for other purposes.

ENROLLED BILL SIGNED

At 7:10 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the Speaker has signed the following enrolled bill:

H.R. 4437. An act to authorize funds for the implementation of the settlement agreement reached between the Pueblo de Cochiti and the United States Army Corps of Engineers under the authority of Public Law 100-202.

MEASURES REFERRED

The following bills were read the first and second times by unanimous consent, and referred as indicated:

H.R. 1241. An act to amend title 18, United States Code, to provide penalties for willful refusal to pay child support, and for other purposes; to the Committee on the Judiciary.

H.R. 3486. An act to amend the Marine Mammal Protection Act of 1972 to provide for examination of the health of marine mammal populations and for effective coordinated response to strandings and the unusual mortality events involving marine mammals; to the Committee on Commerce, Science, and Transportation.

H.R. 3837. An act to make certain changes to improve the administration of the medicare program, to reform customs overtime pay practices, to prevent the payment of Federal benefits to deceased individuals, and to require reports on employers with underfunded pension plans; to the Committee on Finance.

H.R. 4209. An act to amend the act entitled "An Act conferring jurisdiction on certain courts of the United States to hear and render judgment in connection with certain claims of the Cherokee Nation of Oklahoma", approved December 23, 1982; to the Committee on the Judiciary.

H.R. 4906. An act to amend the Consolidated Farm and Rural Development Act to establish a program to aid beginning farmers and ranchers and to improve the operation of the Farmers Home Administration and to amend the Farm Credit Act of 1971, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

H.R. 5193. An act to improve the delivery of health-care services to eligible veterans and to clarify the authority of the Secretary of Veterans Affairs; to the Committee on Veterans' Affairs.

H.R. 5194. An act to amend the Juvenile Justice and Delinquency Prevention Act of 1974 to authorize appropriations for fiscal years 1993, 1994, 1995, and 1996, and for other purposes; to the Committee on the Judiciary.

H.R. 5237. An act to amend the Rural Electrification Act of 1936 to improve the provision of electric and telephone service in rural areas, to establish a grant program to improve the provision of health care services and educational services in rural areas by enabling providers of such services to obtain access to modern interactive telecommunications systems, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

H.R. 5739. An act to reauthorize the Export-Import Bank of the United States;

H.R. 5350. An act to establish the Great Lakes Fish and Wildlife Tissue Bank; to the Committee on Environment and Public Works.

H.R. 5475. An act providing policies with respect to approval of bills providing for patent term extensions, and to extend certain patents; to the Committee on the Judiciary.

H.R. 5619. An act to reorganize technically chapter 36 of title 38, United States Code, and for other purposes; to the Committee on Veterans' Affairs.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-3727. A communication from the Secretary of Energy, transmitting, pursuant to law, an updating of the Comprehensive Ocean Thermal Technology Application and Market Development Plan; to the Committee on Energy and Natural Resources.

EC-3728. A communication from the Secretary of Energy, transmitting, pursuant to law, the report on the demonstration and assessment of energy conservation standards for new commercial and multi-family high-rise residential buildings; to the Committee on Energy and Natural Resources.

EC-3729. A communication from the Secretary of the Interior, transmitting, pursuant to law, certification on certain reclamation lands; to the Committee on Energy and Natural Resources.

EC-3730. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 9-280 adopted by the Council on July 7, 1992; to the Committee on Governmental Affairs.

EC-3731. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 9-281 adopted by the Council on July 7, 1992; to the Committee on Governmental Affairs.

EC-3732. A communication from the Inspector General of the Department of Veterans Affairs, transmitting, pursuant to law, an addendum to the semiannual report of the Inspector General, Departmenbt of Veterans Affairs for the period ended March 31, 1992; to the Committee on Governmental Affairs.

EC-3733. A communication from the Assistant Secretary of State (Legislative Affairs), transmitting, pursuant to law, the annual reports on the Foreign Service Retirement and Disability System and the Foreign Service Pension System for fiscal years 1989 and 1990; to the Committee on Governmental Affairs.

EC-3734. A communication from the National President of the Association of Gov-

ernment Accountants, transmitting for the information of the Senate, a report entitled "A Blueprint for Attracting and Retaining Financial Management Personnel"; to the Committee on Governmental Affairs.

EC–3735. A communication from the Acting Secretary of the Postal Rate Commission, transmitting, pursuant to law, the Commission's opinion and recommended decision on the request of the Postal Service for a recommended decision on Second Class Pallet Discount, 1991, in Docket No. MC91-3; to the Committee on Governmental Affairs.

EC–3736. A communication from the Vice President of the Farm Credit Bank of Spokane (Human Resources and Planning), transmitting, pursuant to law, the annual reports of the Twelfth District Farm Credit Retirement Plan and Thrift Plan for calendar year 1990; to the Committee on Governmental Affairs.

EC–3737. A communication from the Vice President of the Farm Credit Bank of Springfield, transmitting, pursuant to law, the annual report of the Group Retirement Plan for the Agricultural Credit Associations and the Farm Credit Banks in the First Farm Credit District; to the Committee on Governmental Affairs.

EC–3738. A communication from the Chairman of the Federal Maritime Commission, transmitting, pursuant to law, the annual report of the Commission under the Freedom of Information Act for calendar year 1991; to the Committee on the Judiciary.

EC–3739. A communication from the Secretary of Education, transmitting, pursuant to law, final regulations — Perkins Loan Program, College Work-Study Program, and Supplemental Education Opportunity Grant Programs; to the Committee on Labor and Human Resources.

EC–3740. A communication from the Chairman of the Railroad Retirement Board, transmitting, pursuant to law, a report on the award of a contract by the Board; to the Committee on Labor and Human Resources.

EC–3741. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, the fifth report of the Department of Health and Human Services Council on Alzheimer's Disease; to the Committee on Labor and Human Resources.

EC–3742. A communication from the Secretary of Veterans Affairs, transmitting a draft of proposed legislation to amend title 38, United States Code, to provide an additional opportunity to enroll for educational assistance to certain individuals who receive voluntary separation incentives upon separation from active duty in the Armed Forces, and for other purposes; to the Committee on Veterans' Affairs.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. BUMPERS, from the Committee on Small Business, with an amendment in the nature of a substitute:

H.R. 5191. A bill to encourage private concerns to provide equity capital to small business concerns, and for other purposes.

By Mr. PELL, from the Committee on Foreign Relations, without amendment:

S. Res. 330. An original resolution relating to authorization of multinational action in Bosnia-Hercegovina under Article 42 of the United Nations Charter.

By Mr. NUNN, from the Committee on Armed Services, without amendment:

S. 3136. An original bill to authorize appropriations for fiscal year 1993 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes.

S. 3137. An original bill to authorize appropriations for fiscal year 1993 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes.

S. 3138. An original bill to authorize appropriations for fiscal year 1993 for military personnel of the Department of Defense, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes.

S. 3139. An original bill to improve the defense economic diversification, conversion, and stabilization activities of the Department of Defense; to authorize transition assistance for members of the Armed Forces adversely affected by reductions in Federal Government spending for national security functions; to clarify and improve the policies and programs of the Department of Defense concerning the national defense technology and industrial base, and for other purposes.

S. 3140. An original bill to authorize appropriations for fiscal year 1993 for military activities of the Department of Defense, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes.

S. 3141. An original bill to authorize appropriations for fiscal year 1993 for military construction, and for other purposes.

S. 3142. An original bill to authorize appropriations for fiscal year 1993 for defense activities of the Department of Energy, and for other purposes.

S. 3143. An original bill to authorize transition assistance for members of the Armed Forces adversely affected by reductions in Federal Government spending for national security functions, and for other purposes.

S. 3144. An original bill to amend title 10, United States Code, to improve the health care system provided for members and former members of the Armed Forces and their dependents, and for other purposes.

S. 3145. An original bill to amend title 10, United States Code, to clarify and improve the policies and programs of the Department of Defense concerning the national defense technology and industrial base; to encourage and assist the conversion of the national defense technology and industrial base to commercially competitive capabilities, and for other purposes.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. PELL, from the Committee on Foreign Relations:

Genta Hawkins Holmes, of California, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Director General of the Foreign Service;

Linton F. Brooks, of Virginia, to be an Assistant Director of the United States Arms Control and Disarmament Agency;

Nancy M. Dowdy, of the District of Columbia, to be Special Representatives for Arms Control and Disarmament Negotiations;

Robert F. Goodwin, of Maryland, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to New Zealand, and to serve concurrently and without additional compensation as Ambassador Extraordinary and Plenipotentiary of the United States of America to Western Samoa.

(Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination.)

Nominee: Robert F. Goodwin.

Post: New Zealand and Western Samoa.

Contributions, amount, date, donee:

1. Self: none.

2. Spouse: Sydney Goodwin, none.

3. Children and Spouses Names; Kristin, Jennifer, and Bruce, none.

4. Parents Names, Marguerite Goodwin, R.K. Goodwin (deceased), none.

5. Grandparents Names, Deceased, none.

6. Brothers and Spouses Names, none.

7. Sisters and Spouses Names, Ann Hintz; Charles Hintz (separated) none.

Henry Lee Clarke, of California, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Uzbekistan.

(Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination.)

Nominee: Henry L. Clarke.

Post: Ambassador to Uzbekistan.

Contributions, amount, date, donee

1. Self: none.

2. Spouse: Kathleen Ann Clarke, none.

3. Children and Spouses (no spouses) Names; Ann Marie Clarke, Edwin L. Clarke, none.

4. Parents Names, Edwin L. Clarke (deceased), Jane I. Clarke—see attached list, none.

5. Grandparents Names, Edwin G. Clarke (deceased), Florine C. Clarke (deceased), Allen Jones (deceased), Helen I. Jones (deceased), none.

6. Brothers and Spouses Names (No brother), none.

7. Sisters and Spouses (divorced) Names, Jane I. Warlick, none.

POLITICAL CAMPAIGN CONTRIBUTIONS

(By Jane I. Clarke (mother of nominee))

Amount, Date, and Donee

$15.00, January, 1988, Republican Women

$25.00, March 1988, Republican National Committee

$10.00, March 1988 Nat'l Fed. Republican, Women

$5.00, May 1988, Republican National Committee

$5.00, June 1988, GOP Victory Fund

$150.00 Club, September 1988, Bunkham County Rep. Women's

$25.00, September 1988, Jim Martin for Governor

$20.00, September 1988, Victory '88 North Carolina Republicans

$25.00, September 1988, Presidential Trust Republican National Committee

$10.00, February 1989, Nat'l Fed. of Republican Women

$15.00, February 1989, Bunkham County Republican Women's Club

$25.00, March 1989, Republican National Committee

$10.00, March 1989, National Republican Congressional Committee

$5.00, April 1989, Nat'l Fed. Republican Women

$10.00, January 1990, Nat'l Fed. Republican Women

$25.00, January 1990, Republican National Committee membership
$10.00, February 1990, Narvel Jim Crawford (Republican State Legislature candidate)
$25.00, July 1990, Republican National Committee
$15.00, July 1990, Bunkham County Rep. Committee
$25.00, February 1991, Republican National Committee
$15.00, March 1991, Bunkham County Republican Women's Club
$15.00, May 1991, Nat'l Fed. of Republican Women
$25.00, July 1991, Republican National Committee
$25.00, January 1992, Republican National Committee
$35.00, January 1992, Bush/Quayle '92 primary campaign
$10.00, February 1992, Bush/Quayle '92

Donald Burnham Ensenat, of Louisiana, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Brunei Darussalam.

(Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination.)

Nominee: Donald Burnham Ensenat.

Post: U.S. Ambassador to Brunei.

Contributions, amount, date, donee:

1. Self: $1,000 1988 Bush/Quayle 1988; $1,000 1992 Bush/Quayle 1992; $50, 1992, Friends of Bob Livington.

2. Spouse, none.

3. Children and Spouses Names: Minors, Farish: Will, none.

4. Parents Names: Mr. & Mrs. A.G. Ensenat.

5. Grandparents Names: Deceased, N/A.

6. Brothers and Spouses Names, N/A.

7. Sisters and Spouses Names: Mrs. Catherine Danburg (Spouse deceased.)

Edward Hurwitz, of the District of Columbia, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Kyrgyzstan.

(Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination.)

Nominee: Edward Hurwitz.

Post: Kyrgyzstan.

Contributions, amount, date, donee:

1. Self: none.

2. Spouse, none.

3. Children and Spouses Names: Even Hurwitz, Anne Hurwitz, none.

4. Parents Names: N/A.

5. Grandparents Names: N/A.

6. Brothers and Spouses Names; David Hurwitz, Marlene Hurwitz, None.

7. Sisters and Spouses Names; Bess Shay, $50, 1988, Democratic National Committee; $25, 1989, Democratic National Committee; $25, 1990, Democratic National Committee; $25, 1991, Democratic National Committee.

Jon M. Huntsman, Jr., of Utah, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Singapore.

(Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination.)

Nominee: Jon M. Huntsman, Jr.

Post: Ambassador to Singapore.

Contributions, amount, date, donee:

1. Self, Jon M. Huntsman, Jr., $1,000, March 31, 1992, Bush Quayle Compliance Committee; $1000, March 31, 1992, Bush Quayle 1992 Committee.

2. Spouse, Mary Katherine Huntsman, $1,000, March 31, 1992, Bush Quayle Compliance Committee; $1000, March 31, 1992, Bush Quayle 1992 Committee.

3. Children and spouses names, Mary Anne Huntsman (unmarried), No political contributions; Abigail Huntsman (unmarried), No political contributions; Elizabeth Huntsman (unmarried), No political contributions; Jon M. Huntsman III (unmarried), No political contributions.

4. Parents names, Jon M. Huntsman (father), $5,000, February 10, 1988, Governor's Reelection Committee (State); $500, August 23, 1988, Chris Schultz Campaign; $1,000, September 1, 1988, Utah Governors Club; $1,000, October 28, 1988, Victory 88 Campaign; $1,000, November 2, 1988, James V. Hansen; $1,000, November 2, 1988, Howard Nielson; $1,000, November 29, 1988, Victory 88 Campaign; $109, February 17, 1989 Print Flyer Campaign; $1,000, September 14, 1989, Mayor Gillins Campaign; $1,000, July 16, 1990, R. Mont Evans; $200, August 7, 1990, Robert Yates Campaign; $1,000, August 7, 1990, Tom Shimizu; $200, August 7, 1990, Katie Dixon; $500, October 11, 1990, State Sen. Haven Barlow; $500, October 11, 1990, State Rep. Lloyd Frandsen; $1,000, October 11, 1990 State Sen. Richard Carling; $500, October 16, 1990, State Rep. Afton Bradshaw; $1,000, October 17, 1990, Genivive Atwood; $1,000, October 17, 1990, Dan Marriott; $1,000, November 1, 1990, Karl Snow; $1,000, April 4, 1991, Citizens for Coradini; $2,000, September 13, 1991, Dee Dee Corradini (Local); $500, September 13, 1991, Ted Milner Campaign; $2,000, December 23, 1991, Dee Dee Coradini (Local); $1,000, February 27, 1992, Bush Quayle Compliance Committee; $1,000, March 27, 1992, Bush Quayle 92 Committee.

Karen Haight Huntsman (mother), $1,000, March 20, 1992, Bush Quayle Compliance Committee; $1,000, March 20, 1992, Bush Quayle 92 Committee.

5. Grandparents names, Alonzo Blaine Huntsman and Kathleen Huntsman, both deceased, No political contributions; David B. Haight and Ruby Haight, No political contributions.

6. Brothers and spouses names, Paul Christian Huntsman (unmarried), $1,000 February 26, 1992, Bush Quayle 1992 Committee; Mark Haight Huntsman (unmarried), $1,000 February 26, 1992, Bush Quayle Compliance Committee; $1,000 February 26, 1992, Bush Quayle 1992 Committee; James Haight Huntsman (unmarried), $1,000 February 26, 1992, Bush Quayle 1992 Committee; Peter Riley Huntsman and Brynn Ballard Huntsman, $1,000 1990, Dan Marriott; $1,000 1990, Genivive Atwood; David Haight Huntsman and Michelle Rawlings Huntsman, No political contributions.

7. Sisters and spouses names, Jennifer Huntsman (unmarried), $1,000 February 26, 1992, Bush Quayle 1992 Committee; Christena Karen Huntsman, Durham and Richard P. Durham, No political contributions; Kathleen Ann Huntsman Huffman and James Andrew Huffman, No political contributions.

Richard Monroe Miles, of South Carolina, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Azerbaijan.

(Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination.)

Nominee: Richard M. Miles.

Post: Ambassador to the Republic of Azerbaijan.

Contributions, amount, date, donee:

1. Self.

2. Spouse.

3. Children and spouses names, Sharon Miles, Richard L. Miles, Elizabeth Miles, none.

4. Parents names, Iris Mann, none; Louis Mann (Stepfather), James Miles, none.

5. Grandparents names, Richard Fortner, deceased; Lillian Fortner, deceased.

6. Brothers and spouses names, Louis and Phyliss Mann, none.

7. Sisters and spouses names, Louise and Richard Angel, none; Lois and Arthur Navarro, none; Donna and Kristin Peabody, none.

Joseph S. Hulings III, of Virginia, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Turkmenistan.

(Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination.)

Nominee: Jospeh S. Kulings III.

Post: Turkmenistan.

Contributions, amount, date, donee:

1. Self, none.

2. Spouse, none.

3. Children and spouses, none.

4. Parents, none.

5. Grandparents, none.

6. Brother, Timothy G. Hulings, up to $50 each, 1988–92, local candidates: Elkton, Va.

7. Sisters, none.

John Stern Wolf, of Maryland, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Malaysia.

(Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination.)

Nominee: John Stern Wolf.

Post: Ambassador to Malaysia.

Contributions, amount, date, donee:

1. Self, none.

2. Spouse, Mahela Devaux Wolf, none.

3. Children's names, Sarah M. and Stephen D., none.

4. Parents names, Fred Wolf, Jr., deceased; Margery Wolf, $100, July 25, 1988, DNC; $200, Nov. 1, 1988, DNC; $50, May 3, 1989, Walter Phillips for Philadelphia District Attorney; $50, Nov. 12, 1990, Happy Fernandez for Philadelphia City Council; $100, Mar. 23, 1991, Flora Wolf for Judge of the Common Pleas Court of Philadelphia, and $50, June 28, 1991, DNC.

5. Grandparents names, Fred and Daisy Wolf, deceased; Bernard and Irma Stern, deceased.

6. Brother and spouse's names, Peggy Wolf, none, Fred Wolf, Jr., $100, Mar. 18, 1989, Rasmussin Campaign for County Executive; $100, May 21, 1989, Kurt Schmoke Committee—Mayor of Baltimore; $100, Aug. 21, 1989, Alan Hollander for Baltimore City Judge; $200, June 18, 1990, Tribute for Governor Schaefer.

7. Sisters and spouses names, none.

William Harrison Courtney, of West Virginia, a Career Member of the Senior Foreign Service, Class of Counselor, to be Am-

bassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Kazakhstan.

(Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination.)

Nominee: William Harrison Courtney.

Post: Ambassador to Kazakhstan.

Contributions, amount, date, donee:

1. Self, $50, summer 1990, Republican National Committee.

2. Spouse, Paula Feeney.

3. Children and spouses names, William H. Courtney, Jr., Alison Feeney Courtney.

4. Parents names, Mary Lee Fleming, Wilbur Harry Courtney (deceased).

5. Grandparents names, none.

6. Brothers and spouses names, N/A.

7. Sisters and spouses names, Mary Vincent Courtney Collins, David Collins.

David Heywood Swartz, of Virginia, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Byelarus.

(Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination.)

Nominee: Swartz, David Heywood.

Post: Ambassador to Republic of Byelarus.

Contributions, amount, date, donee:

1. Self, David Heywood Swartz, none.

2. Spouse, Ronna Lynn Swartz, none.

3. Children and spouses names, Paul D. Swartz (son), none, Jennifer L. Swartz (daughter), none.

4. Parents names, Keith T. Swartz (father), none, Stella May Swartz (mother—deceased).

5. Grandparents names, Luther Swartz (paternal grandfather—deceased), Osa Swartz (paternal grandmother—deceased), Elmer Heywood (maternal grandfather—deceased), Martha Heywood (maternal grandmother—deceased).

6. Brothers and spouses names, Austin Swartz (brother), none, Patricia Swartz (wife of Austin), none, Stuart Swartz (brother), none. Doris Swartz (wife of Stuart), none.

7. Sisters and spouses names, no sisters.

Mary C. Pendleton, of Virginia, a Career Member of the Foreign Service, Class One, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Moldova.

(Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination.)

Nominee: Mary C. Pendleton.

Post: Republic of Moldova.

Contributions, amount, date, donee:

1. Self, none.

2. Spouse, N/A.

3. Children and spouses names, N/A.

4. Parents names, Joseph S. Pendleton, Katherine T. Pendleton, None.

5. Grandparents names, Deceased.

6. Brothers and spouses names, Mr. & Mrs. Thomas H. Pendleton, Mr. & Mrs. David L. Pendleton, Mr. & Mrs. Joseph P. Pendleton, none.

7. Sisters and spouses names, Mr. & Mrs. Ellis R. Olliges, Mr. & Mrs. John Boling, Ms. Anne C. Kennedy, none.

Stanley Tuemler Escudero, of Florida, a Career Member of the Senior Foreign Service, Class of Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Tajikistan.

(Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination.)

Nominee: Stanley Tuemler Escudero.

Post: Tajikistan.

Contributions, amount, date, donee:

1. Self, Stanley T. Escudero, none.

2. Spouse, M. Jaye Escudero, none.

3. Children and spouses names, S. Alexander Cobb Escudero, none, unmarried. W. Benjamin Peter Escudero, none, unmarried.

4. Parents names, Estelle T. Damgaard, mother, none. Stanley D. Escudero, deceased 1976.

5. Grandparents names,

6. Brothers and spouses names, none.

7. Sisters and spouses names, none.

Kent N. Brown, of Virginia, a Career Member of the Senior Foreign Service, Class of Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Georgia.

(Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination.)

Nominee: Kent N. Brown.

Post: Ambassador to Republic of Georgia.

Contributions, amount, date, donee:

1. Self, Kent Brown, none.

2. Spouse, Irene Brown, none.

3. Children and spouses names, Steven Brown, none, Karen Brown, none.

4. Parents names, deceased.

5. Grandparents names, deceased.

6. Brothers and spouses names, Gordon Brown, none, Carmen Brown, none.

7. Sisters and spouses names, none.

(The above nominations were reported with the recommendation that they be confirmed, subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

Mr. PELL. Mr. President, for the Committee on Foreign Relations, I also report favorably a nomination list in the Foreign Service which was printed in full in the CONGRESSIONAL RECORD of July 27, 1992, and ask unanimous consent, to save the expense of reprinting on the Executive Calendar, that these nominations lie at the Secretary's desk for the information of Senators.

The PRESIDING OFFICER. Without objection, it is so ordered.

By Mr. PELL, from the Committee on Foreign Relations:

Treaty Doc. 102-1. Treaty with the People's Republic of the Congo Concerning the Reciprocal Encouragement and Protection of Investment (Exec. Rept. No. 102-44).

Treaty Doc. 102-6. Treaty with Tunisia Concerning the Reciprocal Encouragement and Protection of Investment (Exec. Rept. 102-45).

Treaty Doc. 102-25. Treaty with Sri Lanka Concerning the Encouragement and Reciprocal Protection of Investment (Exec. Rept. 102-46).

Treaty Doc. 102-31. Treaty with the Czech and Slovak Federal Republic Concerning the Reciprocal Encouragement and Protection of Investment (Exec. Rept. 102-47).

Treaty Doc. 102-33. Treaty with the Russian Federation Concerning the Encouragement and Reciprocal Protection of Investment (Exec. Rept. No. 102-48).

Treaty Doc. 102-34. Protocol to the Treaty of Friendship, Commerce, and Consular Rights with the Republic of Finland (Exec. Rept. No. 102-49).

Treaty Doc. 102-35. Protocol to the Treaty of Friendship, Commerce, and Navigation with Ireland (Exec. Rept. 102-50).

Treaty Doc. 102-30. Convention for the Conservation of Anadromous Stocks in the North Pacific Ocean (Exec. Rept. No. 102-51).

TEXTS OF RESOLUTIONS OF ADVICE AND CONSENT TO RATIFICATION SUBMITTED BY THE COMMITTEE ON FOREIGN RELATIONS TO ABOVE EIGHT TREATIES.

Resolved, (two-thirds of the Senators present concurring therein). That the Senate advise and consent to the ratification of the Treaty Between the Government of the United States of America and the Government of the People's Republic of the Congo Concerning the Reciprocal Encouragement and Protection of Investment, signed at Washington, February 12, 1990.

Resolved, (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Treaty Between the United States of America and the Republic of Tunisia Concerning the Reciprocal Encouragement and Protection of Investment, with Protocol, signed at Washington on May 15, 1990.

Resolved, (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Treaty Between the United States of America and the Democratic Socialist Republic of Sri Lanka Concerning the Encouragement and Reciprocal Protection of Investment, with Protocol and a Related Exchange of Letters, signed at Colombo, Sri Lanka on September 20, 1991.

Resolved, (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Treaty Between the United States of America and the Czech and Slovak Federal Republic Concerning the Reciprocal Encouragement and Protection of Investment, with Protocol and Three Related Exchanges of Letters, signed at Washington on October 22, 1991.

Resolved, (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Treaty Between the United States of America and the Russian Federation Concerning the Encouragement and Reciprocal Protection of Investment, with Protocol and Related Exchanges of Letters, signed at Washington on June 17, 1992.

Resolved, (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Protocol Between the Government of the United States of the Republic of Finland to the Tragedy of Friendship, Commerce and Consular Rights of February 13, 1934, as Modified by the Protocol of December 4, 1952, signed at Washington on July 1, 1992.

Resolved, (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Protocol Between the Government of the United States of America and the Government of Ireland to the Treaty of Friendship, Commerce and Navigation of January 21, 1950, signed at Washington on June 24, 1992.

Resolved, (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Convention for the Conservation of Anadromous Stocks in the North Pacific Ocean, with Annex, which was signed by the United States, Canada, Japan and the Russian Federal on February 11, 1992, in Moscow.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. NUNN, from the Committee on Armed Services:

S. 3136. An original bill to authorize appropriations for fiscal year 1993 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; placed on the calendar.

S. 3137. An original bill to authorize appropriations for fiscal year 1993 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; placed on the calendar.

S. 3138. An original bill to authorize appropriations for fiscal year 1993 for military personnel of the Department of Defense, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; placed on the calendar.

S. 3139. An original bill to improve the defense economic diversification, conversion, and stabilization activities of the Department of Defense; to authorize transition assistance for members of the Armed Forces adversely affected by reductions in Federal Government spending for national security functions; to clarify and improve the policies and programs of the Department of Defense concerning the national defense technology and industrial base, and for other purposes; placed on the calendar.

S. 3140. An original bill to authorize appropriations for fiscal year 1993 for military activities of the Department of Defense, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; placed on the calendar.

S. 3141. An original bill to authorize appropriations for fiscal year 1993 for military construction, and for other purposes; placed on the calendar.

S. 3142. An original bill to authorize appropriations for fiscal year 1993 for defense activities of the Department of Energy, and for other purposes; placed on the calendar.

S. 3143. An original bill to authorize transition assistance for members of the Armed Forces adversely affected by reductions in Federal Government spending for national security functions, and for other purposes; placed on the calendar.

S. 3144. An original bill to amend title 10, United States Code, to improve the health care system provided for members and former members of the Armed Forces and their dependents, and for other purposes; placed on the calendar.

S. 3145. An original bill to amend title 10, United States Code, to clarify and improve the policies and programs of the Department of Defense concerning the national defense technology and industrial base; to encourage and assist the conversion of the national defense technology and industrial base to commercially competitive capabilities, and for other purposes; placed on the calendar.

By Mr. AKAKA (for himself and Mr. INOUYE):

S. 3146. A bill to amend the National Trails System Act to designate the Ala Kahakai Trail in the State of Hawaii as a route to study for consideration for designation as a national trail; to the Committee on Energy and Natural Resources.

By Mr. SIMON (for himself, Mr. DECONCINI, and Mr. METZENBAUM):

S. 3147. A bill to prohibit certain political activities of certain Federal officers in the Office of National Drug Control Policy; to the Committee on the Judiciary.

By Mr. PRYOR (for himself, Mr. RIEGLE, Mr. COHEN, Mr. SHELBY, Mr. GRAHAM, and Mr. DURENBERGER):

S. 3148. A bill to amend title XI of the Social Security Act to establish an Intergovernmental Task Force on Health Care Fraud and Abuse; to the Committee on Finance.

By Mr. BRADLEY:

S. 3149. A bill to establish a demonstration program to develop new techniques to prevent coastal erosion and preserve shorelines; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. BRYAN:

S. 3150. A bill to amend the Federal Trade Commission Act to provide authorization of appropriations, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. DECONCINI:

S. 3151. A bill to amend title 35, United States Code, to permit the filing of a provisional application for a United States patent by describing the invention in a publication in the United States, and to facilitate the filing of patent applications in foreign countries by United States inventors; to the Committee on the Judiciary.

By Mr. KENNEDY (for himself, Mr. HATCH, Mr. SIMON, Mr. MACK, Mr. ADAMS, Mr. BIDEN, Mr. COCHRAN, Mr. CRANSTON, Mr. D'AMATO, Mr. DANFORTH, Mr. DECONCINI, Mr. DIXON, Mr. DODD, Mr. DURENBERGER, Mr. GLENN, Mr. INOUYE, Mr. JEFFORDS, Mr. KASTEN, Mr. KERRY, Mr. LEVIN, Mr. METZENBAUM, Ms. MIKULSKI, Mr. MITCHELL, Mr. MOYNIHAN, Mr. MURKOWSKI, Mr. PELL, Mr. STEVENS, Mr. THURMOND, Mr. WELLSTONE, Mr. WOFFORD, and Mr. RIEGLE):

S.J. Res. 330. A joint resolution to designate March 1993 as "Irish-American Heritage Month"; ordered held at the desk.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. PELL from the Committee on Foreign Relations:

S. Res. 330. An original resolution relating to authorization of multinational action in Bosnia-Hercegovina under Article 42 of the United Nations Charter; placed on the calendar.

By Mr. DOLE:

S. Res. 331. A resolution to commemorate Hungarian National Holiday; to the Committee on Foreign Relations.

By Mr. CRANSTON (for himself and Mr. LUGAR):

S. Con. Res. 134. A resolution to commend the people of the Philippines for successfully conducting peaceful general elections and to congratulate Fidel Ramos for his election to the Presidency of the Philippines; to the Committee on Foreign Relations.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. AKAKA (for himself and Mr. INOUYE):

S. 3146. A bill to amend the National Trails System Act to designate the Ala Kahakai Trail in the State of Hawaii as a route to study for consideration for designation as a national trail; to the Committee on Energy and Natural Resources.

DESIGNATION OF ALA KAHAKAI TRAIL FOR STUDY

• Mr. AKAKA. Mr. President, today Senator INOUYE and I are introducing legislation designed to recognize the importance of the ancient trails of Hawaii.

The National Trails System Act was established to provide for the ever-increasing outdoor recreation needs of our population and to promote the enjoyment and appreciation of the open air and historic resources of the Nation. Under the act, 8 national scenic and 9 national historic trails have been established and 33 trails have been or are being studied for inclusion in the system. Altogether more than 29,000 miles of trails have been designated as national scenic or historic trails. However, not 1 mile of trail in Hawaii has been established or designated for study.

The historical trails of Hawaii long served the people and their ali'i, or ruling leaders, for transportation, communication and trade. Although the canoe was a principal method of travel in ancient Hawaii, human survival depended on extensive cross-country trails that enabled gathering of food and water, and harvesting of materials needed for shelter, clothing, medical care, tools, canoe building, religious observances, and much more. These ancient trails served Hawaii for more than a thousand years. Most islands had an alaloa, or perimeter, trail close to the shoreline as well as mauka-makai trails, extending from seashore to the mountains. Within each ahupua'a, a land tract running from the shoreline to the interior, the trails were used for the trade of products gathered from the sea for those produced from the land.

The ruling monarchs of Hawaii depended on these trails for communication through the use of runners. Runners were not only the bearers of information and materials but, during the years of Kamehameha, were also spearfighters. Cross-country running on the trails was associated with sporting endeavors upon which wagers were made. These island trails were important to the culture of Hawaii and are a

permanent mark upon the land testifying to Hawaii's past.

Just as the markings of Conestoga wagons can still be seen on pioneer trails throughout the Plains States, the impressions made by my forebears can still be seen in the Earth and lava rock of these trails. The ancient trails of Hawaii urgently need protection. Land development and the construction of modern day transportation systems have destroyed many of these ancient trails. Those that remain are in danger of being destroyed by future development.

In 1988, the State of Hawaii recognized the perils to the remaining trails and the need for a comprehensive statewide trail and access system. In response, the State of Hawaii instituted the Na Ala Hele Program to develop and improve mountain and shoreline trails and access while helping to conserve Hawaii's environment and cultural heritage. The opportunity exists to study at least one of the trails identified by the Na Ala Hele Program for designation as a national scenic or historic trail. One of the best preserved ancient trails, but also highly threatened, is the Ala Kahakai, or the "Trail by the Sea," on the Island of Hawaii.

My proposal would designate the Ala Kahakai as a shoreline trail extending from the northern tip of Hawaii Island approximately 175 miles along the western and southern coasts to the northern boundary of Hawaii Volcanoes National Park. Sections of the ancient coastal alaloa trail are in good condition but some segments have been destroyed by wave action, four-wheel-drive vehicles, land-clearing activities, and lava flows. The Trails and Access Program of Hawaii's Department of Land Nat and Natural Resources Forestry and Wildlife Division has prepared a detailed description of the proposed study route. I ask unanimous consent that the description be reprinted in full at the conclusion of my remarks. Let me briefly describe just a few of the historic and scenic highlights along the route.

The trail route passes through four national parks and several State parks. The best known of these is Hawaii Volcanoes National Park and the others are of historical and cultural significance to the people of Hawaii and this Nation. The Pu'ukohola Heiau National Historic Site contains the John Young homesite and the Pu'ukohola Heiau. John Young was a British sailor who became a trusted adviser of Kamehameha I. The Pu'ukohola Heiau which was a *luakini*, or human sacrificial temple, was completed in 1791 and dedicated to the war god Kuka'ilimoku, by Kamehameha through the sacrifice of his cousin and principal rival for supremacy of Hawaii Island. With his cousin's death, Kamehameha ruled the island. Another of the historical parks is Pu'uhonua o Honaunau National Historic Park, which is an ancient place of refuge where until 1819 the vanquished worriers and kapu or taboo breakers escaped death if they reached it ahead of their pursuers.

The route of the trail is also extremely scenic and provides unobstructed ocean-to-mountain vistas. The trail traverses or passes adjacent to all of the island's white sand beaches. Lava flows are visible along the majority of the trail and the sea can be heard in the lava tubes under a hiker's feet. Behind some lava shore are small storm beaches and a few native plants such as the silver-grey-green *hinahina* and the large-leafed *noni*. The nearshore water is quite clear, in some areas, and brightly colored fish are visible from the high shore.

Along the coast from Upolu Point to Kawaihae, an almost continuous string of fishing village ruins have been preserved by dry climate and isolation. This area was heavily populated in Kamehameha's time. Elsewhere along the route are petroglyphs, house sites, agricultural areas, heiaus, salt pans, and fish ponds which provide evidence of past habitation and are of immense interest to archaeologists and Hawaiians intent upon rediscovering their heritage.

North of the long curve of palm-shaded beach that separates the ocean from the fishponds at Anaeho'omalu, there is Waiulua Bay with its brackish ponds. Many of the ponds are decoratively bright with orange and yellow algae and some of them contain rare mutated species that delight marine biologists.

In 1991, the American Hiking Society and Backpacker magazine listed the Ala Kahakai as threatened and encouraged preservation. The State of Hawaii recognizes the importance of this trail and is working diligently to preserve what remains and reestablish that which is gone. This trail deserves to be studied for inclusion in the National Trails Systems. The Federal Government should take action to preserve this historic trail which played a significant role in the development of Hawaii. The Federal Government, through the National Park Service, should work with the State of Hawaii in a spirit of cooperation to complete a study as required by the National Trails System Act. In completing the study, the National Park Service should look for innovation solutions to management problems and not assume that the trail must be managed by the National Park Service. The designation of a trail as a part of the National Trails System and monetary assistance from the Federal Government should not preclude local or State management. Sharing of management with State and local governments is economically and politically advisable.

Mr. President, I urge my colleagues to support this legislation. I ask unanimous consent that the full text of my bill and the description of the route of the Ala Kahakai be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 3146

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION OF ALA KAHAKAI TRAIL FOR STUDY.

Section 5(c) of the National Trails System Act (16 U.S.C. 1244(c)) is amended by adding at the end the following new paragraph:

"(34) Ala Kahakai Trail in the State of Hawaii, an ancient Hawaiian trail on the Island of Hawaii extending from the northern tip of the Island of Hawaii approximately 175 miles along the western and southern coasts to the northern boundary of Hawaii Volcanoes National Park.".

DESCRIPTION ALA KAHAKAI TRAIL

(Furnished by the Trails and Access Program, Forestry and Wildlife Division, Department of Natural Resources, State of Hawaii)

THE TRAIL'S NATIONAL SIGNIFICANCE

The *Ala Kahakai* (trail by the sea) would extend approximately 175 miles from the northern tip of the largest island in the Hawaiian chain, Hawai'i Island, to the northern boundary of Hawaii Volcanoes National Park. In ancient Hawai'i it was customary for each island to have an *alaloa* (long trail) that would facilitate travel completely around the island. The *Ala Kahakai* would include portions of the ancient coastal *alaloa* of Hawaii island. This is a listing of the major scenic, natural, historic and recreational features that give the Ala Kahakai National Trail significance.

SCENIC VALUES

Mountains

Major relief features on Hawai'i are the result of volcanic activity. Hawai'i island was built by the combined action of five distinct volcanic centers. From the proposed trail, three and sometimes four of these mountain formations are in view. Unobstructed ocean to mountain vistas are enjoyed by the hiker.

(1) Kohala mountain range—5,400 feet elevation, extinct, the first volcano to form.

(2) Mauna Kea—13,796 feet elevation, nearly 30,000 feet above the ocean floor, dormant. At its summit is Lake Waiau, the highest lake in the United States. Frequently snow covered; an internationally valued location for astronomical observatories.

(3) Mauna Loa—13,677 feet elevation, still an active volcano, probably the largest single mountain on earth, frequently snow covered.

(4) Kilauea Volcano—4,090 feet elevation, active volcano located in the Hawai'i Volcanoes National Park where spectacular eruptions continue to occur.

(5) Hualalai—8,271 feet elevation, still active volcano with latest eruption in 1801.

Volcanic Formations

(1) Kahuku Pali—This spectacular scarp (cliff produced by faulting of the ground surface) is in some places 600 feet high, extends 10 miles on land and can be traced southward for 18 miles beneath the ocean.

(2) Kuili cinder cone—At 343 foot elevation, this cone is a landmark as it is one of very few hills found next to the South Kohala-North Kona coastline. One can gauge dis-

tances along the coast by noting Kuili's location.

Such cinder cones and tuff cones can be seen at the summits of volcanic centers. The cones were built by moderately explosive volcanic eruptions. Certain cinder hills at lower elevations are mined for cinder which is sold and used in construction. Kuili has not yet been mined, and was used by Hawaiians as a lookout point to spot schools of fish.

(3) Ancient and contemporary lava flows are visible along the majority of the trail. The *a'a* (rough and *pahoehoe* (smooth, ropy) types of lava are dominant features, and beach areas often take the appearance of oases in the midst of desolate lava fields. Understanding how the Hawaiians survived and flourished in this seemingly inhospitable environment makes fascinating study and affords ample opportunity for trail interpretation. The west coast of Hawai'i was heavily populated in ancient times, as reported by explorers Cook and Vancouver and other travelers.

Beaches and Ocean Views

Volcanic haze from Kilauea's ongoing eruption can obscure scenic views. When prevailing winds blow away the haze, landmarks can be seen at great distances. On a clear day when there are few clouds, one can see across the channel to the islands of Maui, Kaho'olawe, Molokini, and the faint outline of Moloka'i.

The west coast of Hawai'i island has all the white sand beaches on the island. Once developed, lands adjacent to such beaches become extremely expensive. Costs of developing public parks are often prohibitive for Hawai'i State and County. The west coast has most of the beach areas on the island and less rainfall than the east side. Thus residents islandwide value west Hawai'i for shoreline recreation.

Fishponds

Hawaiians built more fishponds than any other Pacific island people. Fishponds were often reserved for use by chiefs. Numerous fishponds, at times flanked by significant historic sites, can be found along the west coast. They include:

(1) Kalahuipua'a—approximately 10 acres of prime fishponds. Several hotels, condominiums and golf courses are located here.

(2) Opae'ula or Kapo'ikai Pond—Once a fishpond, it is now a significant habitat for endangered, endemic Hawaiian birds.

(3) Kaloko and Aimakapa Ponds—located in an area being developed as a National Cultural Park at Honokohau, North Kona. Aimakapa is 20 acres of open water and a significant habitat for endangered birds. Kaloko fishpond has the largest and thickest manmade sea wall on Hawai'i island. The sea wall is to be repaired as part of the national park plan.

See the Historic Values section for more on Hawaiian fishponds.

Marine Life Conservation Districts (MLCD)

In the State of Hawai'i are the only well-developed Pacific coral reefs in the United States. Hawai'i is the most isolated island archipelago in the world. Due to this isolation, a large number of marine species are unique and endemic to Hawai'i. State Marine Life Conservation Districts have been established at Lapakahi and Wailea Bay in North Kohala and Kealakekua Bay in South Kona.

Lapakahi MLCD located on the northwestern coast of Hawai'i, Lapakahi is about 12 miles north of Kawaihae. The MLCD is divided into two subzones. Subzone A includes Koai'e Cove, and Subzone B includes the waters 500 feet outside of Subzone A and extending southward along the shoreline adjacent to the park, from the highwater mark to a distance of 500 feet offshore. Lapakahi State Historical Park features excavated and partially reconstructed ruins of the ancient fishing village of Koai'e, dating back to the 1300s.

Within Koai'e Cove are two small beaches consisting of coral rubble (there is no sand beach). The cove provides the easiest access to the water. The nearshore bottom is mostly boulders and lava fingers with some coral. The cove's northern portion has some good coral gorwth close to shore, but coral and fish are most abundant in the southern portion. Considerable marine life is also found around the outcropping of rocks to the right of the cove's center.

There is a remarkable diversity of fish species within the MLCD, as nearly all nearshore species typical of the North Kohala coast are represented. During the winter, humpback whales are frequently spotted just offshore.

Waialea Bay MLCD is located in the southern portion of Kawaihae Bay, on the western coast of Hawai'i. The MLCD extends from the highwater mark seaward to a line from the point immediately north of Ohai Point to Kanekanaka Point.

Although access to Waialea Bay is not particularly easy, the site is popular with Big Island residents. The beach (known locally as Beach 69 because of the pole marker) erodes due to strong surf during winter months, but is a beautiful beach during the summer. The bay's bottom drops off gradually from the beach to depths of about 30 feet outside the bay's mouth. An intermittent stream enters the bay, and surface visibility is reduced during periods of freshwater intrusion.

The best reef is in the MLCD's southern portion, and extends out beyond the District's boundaries. Depths range from about 10 to 30 feet. Coral communities are also found around the rocky prominence inside the bay. The diversity of marine life in Waialea is among the best in all of Kawaihae Bay, which makes it a popular site for snorkel and SCUBA activities.

Humpback whales are often seen outside the bay during winter.

Kealakekua Bay MLCD, located on the western coast of Hawaii near the village of Captain Cook, Kealakekua Bay is about 30 minutes south of Kailua-Kona. The MLCD extends from the highwater mark seaward to a line from Cook Point to Manini Beach Point. A line from Cook Point to the north end of Napo'oop'o Beach divides the district into Subzone A to the north and Subzone B to the south.

Kealakekua Bay's waters are nearly pristine, and its diversity of marine life is spectacular. The northern coastline is bordered by a sheer cliff (Pali-kapu-o-Keoua). On the pali's face numerous lava tube openings are visible, some of which are ancient Hawaiian burial caves.

Captain James Cook, the British explorer who discovered Hawai'i in 1778, arrived at Kealakekua Bay in January 1779 during his second voyage to the islands. Thought by the natives to be a god, Cook was given godly treatment. But the following month he was killed in a skirmish on the shores of Ka'awaloa Cove following a series of incidents between his crew and the Hawaiians.

In 1878 a 27-foot monument was erected in Cook's honor by his countrymen near the site where he was killed. On the lava flats behind Cook Monument are the ruins of the ancient village of Ka'awaloa.

The bay's best diving is in Ka'awaloa Cove (near Cook Monument where depths range from about 5 to 120 feet. The diversity of coral and fish is exceptional, and fish are quite tame.

Dolphins are commonly seen inside the bay.

Other Features

The Oceanthermal Energy Conversion project at Keahole is the only project of its kind in the United States. Here also are several experimental aquacultural operations.

The proposed Ala Kahakai would link national parks in Kawaihae, Honokohau, Honaunau and Hawai'i Volcanoes, and several state and county coastal parks.

NATURAL VALUES

Birds

At least two species of endangered birds can be seen along the trail, notably at Kapo'ikai and Aimakapa Ponds. Hawaiian stilts *(Himantopus mexicanus knudseni)* on Hawai'i island are only found at west coast ponds. The Hawaiian stilt population was estimated at 1,500 birds in 1977. Hawaiian coots (*Fulica americana alai*) had an estimated worldwide population of 2,500 birds in 1977.

Plants

The 1972 compilation of Hawaiian plants lists 1,381 native species of flowering plants of which 96.6 percent are endemic. Today 150 rare Hawaiian plant taxa are being proposed as threatened and/or endangered in the next couple of years. In the last six months, 22 plant taxa have become officially listed as endangered, and one plant species has been officially listed as threatened for the State of Hawai'i. However, scores of plants that took millions of years to evolve in the isolation of the Hawaiian chain have been exterminated in the two centuries since Captain Cook's arrival in Hawai'i (1778). Introduced animals and plants are primary responsible for this rapid decline of endemic flora. Most surviving endemic plants are in remote areas.

The February 21, 1990 federal register lists five candidate plant species under review for threatened and/or endangered status for this coastal area of Hawai'i.

A few endemic coastal plants can be seen growing along the trail, such as:

(1) *Maia pilo* (*Capparis sandwichiana*), used by Hawaiians to mend broken bones, and

(2) *Pua kala* (*Argemone glauca*)—a poppy used by Hawaiians for relief of toothache and ulcers.

Anchialine Pools

Anchialine (brackish) pools are frequently found along this coast. The larger pools were usually made into fishponds by the early Hawaiians. Anchialine pools exist almost exclusively along the shorelines of Hawai'i island and southwest Maui, and are rarely found on ancient lavas. These unique pools are increasingly being studied in order to better understand the environmental effects of surrounding developments on the numerous endemic plant and animal species found in anchialine waters. One 1974 study found numerous endemic plant and animal species. Among the endemic plants are crusty algae ranging in color from dark green and white to orange. Endemic animals include:

(1) *Opae'ula* shrimp. (*Halocaridina rubra*), raised extensively by Hawaiians for fish bait. Preyed upon by another endemic shrimp, *Metabetaeus lohena*. Two endemic shrimp species are blind and are known only from one other Hawaiian locality at Cape Kinau, Maui.

(2) There are a hydroid and snail found only in these Kona coast anchialine ponds.

(3) Moray eel (*Gymnothorax hilonis*) Prawn (*Macrobrachium grandimanus*) Fish (*Eleotris sandwicensis* and *Kuhlia sandwicensis*).

Waiulua Bay, part of the future Anaeho'omalu resort complex, is the location of the largest concentration of anchialine pools in the State. Locations of anchialine pools along the trail are Puako, Kapalaoa, Weliweli, Wainanali'i, Keawaiki, Kiholo, Luahinewai, Ka'upulehu, Kuki'o, Makalawena, Ka Lae, Ka'elehuluhulu, and others.

Kilauea Volcano

Within the Hawai'i Volcanoes National Park portions of the coast have been and continue to be dramatically altered by ongoing volcanic activity.

HISTORIC VALUES

Hawai'i islands' coastal areas are rich in history. Traces of once thriving coastal communities that existed in ancient times can be seen in many locations. This is only a partial listing of the abundant shoreline historic sites. Many of the historic sites are listed on the State and/or National Register of Historic Places.

Ancient Trails

Although the canoe was a principle method of travel in ancient Hawai'i, human survival depended on extensive crosscountry networks that enabled gathering of food and water, and harvesting of materials needed for shelter, clothing, medical care, tools, canoe building, religious observances, and much more.

Trails and their surrounding historic sites provide clues to how communities were linked socially, economically, and politically; which areas were important in early settlement, commerce, and religion; where particularly powerful chiefs resided; and where valuable forest or sea resources were once located.

Ancient trails are those developed prior to Western contact. They facilitated trading between upland and coastal villagers, and communications between districts, *ahupua'a* (ancient land divisions), and extended families. Ancient trails were usually narrow, following the natural topography of the land, and sometimes, paved with smooth, waterworn stepping stones (*'ala or pa'ala*). There were strict rules, punishable by death, governing access to the precious resources of the mountains and ocean. Trail use restrictions were according to the laws of the chief ruling over the particular land division(s) in which the trail was located. However, the *alaloa* (long trails), circumscribing the island, were open to all in times of peace. The proposed Ala Kahakai includes sections of the ancient *alaloa* that still exist.

The *Makahiki* was ancient Hawaiian annual tax collection season beginning in mid-October and lasting several months. It was a season of sports and religious festivities; war was prohibited. For tax collection, a procession of priests and others carrying the Makahiki god symbol would walk the shoreline trail in a clockwise direction around Hawai'i island.

Mamalahoe Kanawai is translated, Law of the Splintered Paddle. The story is told that Kamehameha I, who would later conquer and unite most of the Hawaiian islands, set out one day in a war canoe to raid a place along the Puna coast. He jumped ashore and ran after two fishermen. While running his foot slipped and was trapped between lava rocks. Seeing his plight, one of the fishermen returned with a paddle and struck him on the head so hard that the paddle splintered to pieces. Kamehameha escaped, but this experience was commemorated years later in the name he chose for one of his best-known laws, *Mamalahoe Kanawai*. This law was intended to guarantee the safety of the highways (trails) to all, particularly women, children, the sick and the aged.

Historic Trails

Historic trails are those developed after Western contact. Overland travel was predominantly by foot throughout the 1830s. With the expanding use of horses and mules from the 1840s onward, many ancient foot trails were modified by removing the smooth stepping stones which caused the animals to slip. Trail and road-building in the kingdom was done by "forced labor," prisoners, and as a form of tax payment. Sometimes trail builders were paid laborers. New, wider trails has to be constructed to accommodate two horses passing each other and eventually horsedrawn carts. Unlike the ancient foot trails, these trails could not simply conform to the natural, sometimes steep slopes. Dips in the terrain needed to be leveled, and sections of trail built-up and raised. Western surveying techniques led to straight and direct routes. These more modern trails were often bordered with kerbstones to help confine the animals to the trail. This was especially helpful when trails were used to drive cattle several miles to the nearest shipping point or to greener pastures.

All along the Ala Kahakai are remnants of ancient and historic trails illustrating the effects of changing modes of transportation—from foot travel, to horse and mules, to carts, and finally to horseless carriages.

North Kohala District

Many sites in this district are associated with events in Kamehameha I's life. Kamehameha I life. Kamehameha I was a high chief of Hawai'i island who waged war, until, in 1800, he succeeded in uniting all of the islands except Kauai under his rule, thus founding a dynasty which would rule the Hawaiian kingdom for nearly a hundred years. Hawai'i is unique in the United States for many reasons, one for which is Hawai'i's monarchical form of government that endured until 1893. Kamehameha's life is a fascinating one, and much history associated with him took place on Hawai'i island.

Umiwai Bay—Kamehameha I was born here in approximately 1758. It is a State of Hawai'i Historic Site.

Mo'okini Heiau—Tradition says that the *heiau* (temple) was built in the A.D. 1300–1400s and re-dedicated as a main war temple by the warrior, Kamehameha. It is well-known *luakini* (human sacrificial) *heiau* and a registered National Historic Landmark.

Kapunapuna and Kapa'a Villages—Along the coast from Upolu Point to Kawaihae, an almost continuous string of fishing village ruins have been preserved by dry climate and isolation.This area was heavily populated in Kamehameha's time. One of the largest village sites in North Kohala is Kapunapuna Village.

Lapakahi State Historical Park contains a restored fishing village site dating back to approximately 1300 A.D. Coastal villages often include ruins of house enclosures, canoe sheds, burials and fishing shrines.

Old Kohala Railway presently extends from Mahukona to Kokoiki. Established in 1878, it once ran from Mahukona to Niuli'i, a distance of about 20 miles. It was used for transporting sugar and other freight, to and from the small Mahukona harbor.

South Kohala District

From Mahukona to Kawaihae are shoreline jeep trails which are used regularly by residents. Some of the jeep trails were probably built over older trails. Kawaihae literally means "the water of wrath." It is said that early Hawaiians fought for water from a pool in this dry area.

John Young's Homesite is located within the 77 acre area comprising the Pu'ukohola Heiau National Historic site. John Young was a British sailor who later became a trusted advisor of Kamehameha I. Kamehameha made him a Hawaiian chief and appointed him governor of Hawai'i island from 1802 to 1812. His granddaughter was Queen Emma, wife of King Kamehameha IV.

Pu'ukohola Heiau—Kamehameha ordered this *luakini* (human sacrificial) *heiau* built, and it was completed in 1791. Kamehameha dedicated it to the war god, Kuka'ilimoku, with a sacrifice of his cousin and principle rival for supremacy of Hawai'i island, Keoua. With Keoua's death, Kamehameha ruled the island. Kamehameha had invited Keoua to the *heiau* dedication to make peace, but instead had his cousin killed as he stepped ashore from a canoe.

Mailekini Heiau—On the hillside between Pu'ukohola and the sea is Mailekini *heiau*, equal in dimensions to Pu'ukohola. It was used by Kamehameha's ancestors, and no human sacrifices were made there.

Hale o Kapuni Heiau is believed to be submerged in a cove at the base of the hill where Pu'ukohola and Mailekini are located. This *heiau* was dedicated to shark gods and is located in a shark breeding area.

Petroglyph fields—Compared to other Polynesians, Hawaiians were the most prolific in making petroglyphs. Nowhere else in the Pacific are there petroglyph fields more extensive than in Hawai'i and particularly on the Big Island of Hawai'i. Large petroglyph fields can be seen in Puako, Anaeho'omalu, Kapalaoa, Ka'upulehu, and Pohue, and Pu'uloa in Ka'u district. In addition, small groups of carvings may be found at other coastal locations. Petroglyphs are likely to be in places along trails where travelers could rest.

Fishponds—In a U.S. Department of the Interior, National Parks Service publication, "Ancient Hawaiian Shore Zone Fishponds: An Evaluation of Survivors for Historical Preservation," by R.A. Apple and W.K. Kikuchi, the Kalahuipua'a ponds of South Kohala were given the highest rating on Hawai'i island (2.45 out of a possible 3) and the second highest in the State for their historic integrity and feasibility for aquacultural use without extensive modifications. There are more fishponds and different types of fishponds in Hawai'i than on any other Pacific island. Archaeological and oral histories indicate that Hawaiian fishponds first appeared between the A.D. 1000–1400s. Fishponds in Hawai'i were primarily built and controlled by *ali'i* (chiefs).

In Hawaiian society, control of water and foods sources meant power and status. *Kekaha wai ole* (desolate land without water) is the general name given to the vast, dry lava fields found along the North Kona coast. In such arid lands it is understandable that great value and prestige were placed on the control of water resources. Other historic fishponds can be seen at Anaeho'omalu, Kiholo, Kaloko and Honokohau.

North Kona District

Kamehameha Fishpond at Kiholo—Royal fishponds existed at Kiholo by 1801 when they were threatened by the Hualalai lava flow of that year. Early Hawaiian historian Samuel Kamakau relates in his *Ruling Chiefs* that, as the flow threatened to engulf Kiholo and its ponds, Kamehameha was called to

Kiholo to placate the volcano goddess Pele—and he was successful. The flow stopped short.

Kamehameha I ordered a fishpond built at Kiholo in 1810. Reverend William Ellis described the pond as not less than two miles in circumference with a large stone ocean wall, a half mile in length. Legends say that Pele, disguised as an old woman, was refused fish from this pond. She was again refused when she asked for fish entrails. In anger she caused the 1859 lava flow which covered nearly the entire fishpond. The 1859 flow headed almost directly to the fishpond from Mauna Loa, a distance of 33 miles to the sea.

Wainanali'i Village was also destroyed by the 1859 flow. Traces of the village can still be seen and several foot trails lead to the area. According to the well known missionary, Reverend Lorenzo Lyons, the villagers were aroused at midnight by the hissing and roaring of the lava flow. Most escaped in time but several were trapped. The little harbor by the village was filled with lava. The 1859 flow is easily distinguishable from older flows along the coast. More recent flows are darker with less vegetation.

Pa'aiea Pond is said to have been three miles long, one and a half miles wide, and owned by a chief. It extended from Ka'elehuluhulu to Kalaoa. In a very similar legend Pele was denied fish from Pa'aiea and in anger caused the 1801 lava flow to fill this huge pond.

Protestant church foundation at Kiholo—As the 1859 flow drew near, the Protestant church was disassembled lest it be destroyed. However, the lava separated and went around the church site, leaving it untouched. Today the church foundation remains encircled by lava.

Salt pans at Kiholo and Ka Lae Mano—Remains of salt works can be seen at Kiholo, Ka Lae Mano, Ka'elehuluhulu and other locations along the coast. Hawaiians used shallow depressions in rocks adjacent to the sea to make salt. Larger quantities were produced in the 1800s and 1900s in man-made, shallow salt pans along the coastline. Kiholo and Ka Lae Mano were major areas of salt production, and Ka Lae Mano's salt was famous for its excellent quality.

Luahinewai is the deepest anchialine pool along the west coast. Kamehameha I's rival and cousin, Keoua, was the ruling chief of the Ka'u kingdom, the southern and eastern part of Hawai'i island. While on trip to Pu'ukohola *heiau* where he would be killed, Keoua's canoes landed at Luahinewai where he bathed. After bathing he cut off the end of his penis, an act which sorcerers called "the death of Uli." The cultural significance of this act was that Keoua knew that he was about to die. The cut off part could be used in sorcery against those who would be responsible for Keoua's death.

Petroglyphs at Ka'upulehu—Some of the petroglyphs at Ka'upulehu are interpreted as telling the story of the *Fair American*.

In 1790 Kame'eiamoku was a high chief of a residence at Ka'upulehu. Kame'eiamoku, committed a petty offense while aboard the ship *Eleanora*, for which he had been beaten by a Captain Simon Metcalfe. Angered and humiliated, he vowed to capture the first foreign boat that came his way. Unknown to him, the *Eleanora* had proceeded to Maui where, in retaliation for the killing of a sailor on watch, Metcalfe ordered what became the Olowalu massacre, in which over a hundred Hawaiians were killed or wounded.

The next vessel which put in at Ka'upulehu was, as fate would have it, the tiny schooner, *Fair American*, commanded by Metcalfe's son and having a five-man crew. Kame'eiamoku and his followers were admitted to the vessel under pretense of friendly trade. Captain and crew were thrown overboard, all but one were killed, and the vessel was seized. The sole survivor, Isaac Davis, the *Fair American* and all items seized from the schooner were taken from Kame'eiamoku by Kamehameha. The *Fair American* became the first foreign vessel in Kamehameha's war fleet. Isaac Davis later became a confidential advisor of Kamehameha, along with John Young.

Queen's Bath in Kaloko/Honokohau is an anchialine pool said to have been a queen's bath. It is surrounded by seven large and striking lookout mounds made of lava rock. It is thought that guards would warn people away when the queen was bathing. The mounds form a rectangular pattern around the brackish pool.

Hulihe'e Palace in Kailua was built in 1838 by Kuakini, governor of Hawai'i island. Princess Ruth Ke'elikolani lived there for a time, and King Kalakaua used it as a summer palace. In 1927 the palace was restored as a museum and is a historic attraction today.

Mokuaikaua Church in Kailua was also constructed by Governor Kuakini, with the cooperation of 4,000 people. Stones from an old *heiau* at the same spot were used for the foundation. It was dedicated in 1823 and rebuilt in 1837 after its destruction by fire.

Kamoa Point (traditionally, Ka Lae o Ka Moa), located south of Kailua-Kona, is a promontory with a concentration of Kamehameha I and pre Kamehameha I cultural remains. These historic sites include a women's *heiau* for healing and purification rites; a *heiau* with a focus on martial arts and athletic excellence; a repository for the war god, Kuka'ilimoku, (during Kamehameha I's time); an important surfing *heiau;* and a *heiau* for the burial preparations of deceased *ali'i*. Kamoa Point is on the Hawai'i Register of Historic Places.

Kuamo'o Burials are a National Historic Site and commemorate an important event in Hawaiian history.

In 1819 Kekuaokalani, nephew of Kamehameha I and cousin of Liholiho (Kamehameha II), regarded Liholiho's orders to end the kapu system as a heinous offense. Many priests and commoners gathered in support of Kekuaokalani, and an insurrection ensued. All efforts at conciliation failed, and at Kuamo'o a bitter, bloody battle took place. Kekuaokalani and his wife, Manono, were killed. This defeat confirmed the new king Liholiho's decree, and the kapu system and associated religious system were abandoned. Discontinuance of formal religious rituals and the Makahiki celebrations left a vacuum in Hawaiian life. Thus in 1819, a year prior to the arrival of American missionaries, the stage was set for the introduction of a new order and new religion.

South Kona District to South Point

Kealakekua Bay is famous as the location of Captain Cook's death on February 14, 1779. When he first arrived at Kealakekua Bay on January 17, 1779, it was estimated that not less than 10,000 Hawaiians enthusiastically greeted the ships. *Hikiau heiau* is located here and is a State monument. It was a *kluakini heiau* of Kamehameha I. Here Captain Cook was ceremoniously received as the god Lono: he had arrived during the Makahiki season when, according to mythology, Lono was expected to arrive from the sea.

Pu'uhonua o Honaunau National Historic Park—This *pu'uhonua* is an ancient place of refuge where until 1819 vanquished warriors and kapu breakers escaped death if they reached it ahead of their pursuers. It has the walls of a fortified *heiau*. There are two *heiau* within the walled area. One is the Hale o Keawe.

Hale o Keawe—In this *heiau* the bones of high chiefs were kept in sennit caskets.

Holua slides—Very little is known about the ancient Hawaiian sport of *holua* sliding. A long narrow sled was constructed and used to slide down grassy slopes. Remains of *holua* slides continue to be discovered. Along the proposed trail, *holua* slides can be seen as sloping ramps made of varying sizes of lava rock. These ramps were covered with grass prior to sliding. The most significant *holua* slides known to be along the proposed trail are:

(1) Keauhou slide in North Kona which extended for a mile and was used until approximately 1825. This slide is a national Historic Site. Presently a half mile of the slide crosses a golf course, while the other half is as yet on undeveloped land.

(2) Ahole slide in South Kona is in better structural condition than any other known slide in the State. It is also a National Historic Site. Until the 1960s the large area adjacent to this slide was used for military bombing practice. There are impressive foot trails in this area also. It is believed that with the end of the kapu system, the *holua* slides were abandoned. Missionaries discouraged the sport since gambling was associated with it.

Ka Lae (South Point, Ka'u) is the southernmost point in the United States.

Heiau o Kalalea—This fishing shrine at Ka Lae was kapu to women. Offerings are still placed there.

Pohaku o ke au (stone of the times) is located near the Heiau o Lalalea. The stone is believed to turn over if there is to be a change of government.

Other Historic Features

Hieaus in good and bad structural condition are found along the coast and this outline has identified only a few of them. Among those omitted, for example, is 'Ahu'ena *heiau* which Kamehameha ordered restored. Located on the oceanfront at Kailua-Kona, 'Ahu'ena has recently been restored by Hawaiian experts according to descriptions given in John Papa Ii's *Fragments of Hawaiian History*. It is one of the best restoration efforts in the State.

In November 1819 at Kailua, Kamehameha II (Liholiho) officially put an end to the kapu system, an act which was to have dramatic effects on Hawaiian society and culture. He ordered *heiaus* destroyed and idols burned. Many Hawaiians refused to abandon traditional practices, and some idols escaped destruction. The *heiaus* and other Hawaiian artifacts that can be appreciated today have managed to survive earlier efforts to destroy the vestiges of Hawaiian religious practices.

Shelter caves are another feature easily visible to the hiker. These are small lava bubbles which were used by Hawaiians for temporary shelter while at the shoreline. The caves are usually big enough for one or two men to comfortably sleep. The air is quite cool in the shelter even on the hottest day. Piles of discarded seashells and other organic material outside the caves are indicators of use by early Hawaiians.

Burial caves are found in lava tubes and in cliff areas along the arid coast. All burials are considered sacred and off limits to travelers.

Ku'ula stones are fishing shrines which vary in size and are carved or natural. Used to attract fish, they honor the god of fishermen, Ku. Some of these sacred stones are

still used by fishermen, and their locations are often disguised as a precaution against theft.

RECREATIONAL USE OF HAWAI'I COASTAL TRAIL

Present Use

Present recreational use of the areas along the trail varies greatly depending upon the ease of access and proximity to population centers. A few areas receive intensive use while others are rarely visited. The recreational opportunities afforded to residents and visitors along this trail system are numerous and diverse. They include such activities as:

Swimming—Various types of swimming areas are present, including both protected bays, tide pools, and open ocean.

Surfing—A number of board and body surfing sites are found along the coast.

Snorkeling and scuba diving—The coral reefs along Hawai'i's west coast are among the best developed in the islands. The water is warm and clear, and many types of marine life abound, including humpback whales and dolphins. Three Marine Life Conservation Districts are located along this coast.

Fishing—

Boating—The calm waters and steady trade winds offer ideal boating conditions for all kinds of craft.

Exploration—Areas along the trail present unlimited possibilities for exploration and scientific research. Lava fields, anchialine pools and tidepools, historic ruins and beach areas are all accessible from the trail.

Hiking—Short or long distance hikes are presently possible along the trail, although the lack of access and clearly marked trails can be problematic. A number of other trails which run from the shoreline to the mountains intersect the coastal trail and could provide access to upland areas if public rights-of-way are present.

Photography—The unique splendor and diversity of Hawai'i's natural environment make it an ideal area for photographic and other artistic pursuits.

Birdwatching—Endemic and migratory species are found by brackish ponds along the trail, including the endangered Hawaiian stilt and Hawaiian coot. Care needs to be taken so as not to disturb the birds during nesting periods.

Other—Certain State, County, and National parks along the route permit camping and have facilities for organized recreational activities.

Potential Use

The full recreational potential of the coastal trail system is at present unrealized due to a lack of funds to properly develop it for public use, the scarcity of access points, and public rights-of-way. A unified trail system with well marked routes and access points would provide a wealth of recreational and educational opportunities for Hawai'i resident population. Visitors would also greatly benefit from the added attraction that such a trail system would provide.

The presence of four National and several State parks along the proposed trail route provides a unique opportunity to link together these areas, thereby increasing the value of each. A number of these parks have as their theme the historical and cultural heritage of the Hawaiian people. The trail system would provide a link to Hawai'i's past and function as a living museum.

Access points at selected sites along the trail would allow varying types of hiking activities ranging from short day hikes to extended hikes of several weeks. Campgrounds located at suitable intervals along the trail would complement those found in parks and provide the hiker with facilities for overnight stays.

SUMMARY

Scenic beauty and unique natural features are found in many of Hawai'i's trails, but no other trail is as concentrated with historic sights of national significance, as is the Ala Kahakai. National support for preserving the ancient *alaloa* in the form of the *Ala Kahakai*, is key to ensuring this trail's survival.●

By Mr. SIMON (for himself, Mr. DECONCINI, and Mr. METZENBAUM):

S. 3147. A bill to prohibit certain political activities of certain Federal officers in the Office of National Drug Control Policy; to the Committee on the Judiciary.

OFFICE OF NATIONAL DRUG CONTROL POLICY POLITICAL ACTIVITIES ACT

● Mr. SIMON. Mr. President, today I introduce legislation to prohibit political campaigning and political management by appointed officers of the Office of National Drug Control Policy [ONDCP], commonly known as the drug czar's office.

Mr. President, the Office of National Drug Control Policy is responsible for the formation and implementation of our national drug control strategy. Appointees to this office perform a public service that requires leadership on a complex issue which affects the lives and well-being of all Americans. While I do not expect the drug czar and other appointees to act in a political vacuum, I cannot accept the blatant politicization of the office.

Last month, I inserted an article from the Orlando Sentinel in the RECORD which reported that over 40 percent of the positions at ONDCP are patronage positions. This is the highest percentage of political patronage positions in any Federal governmental agency. By comparison, the Justice Department and the Departments of the Army, Navy, and Air Force each have less than 1 percent. The article also points out that some staff members in key positions at ONDCP did not even mention the words "drugs" in their job applications. The high percentage of political appointees coupled with the general lack of experience with the drug issue has severely undermined the legitimacy of the office.

I believe this is a direct result of the politicization of the office which began under former drug czar William Bennett. During his tenure as drug czar, Mr. Bennett traveled the nation making political campaign speeches on behalf of administration-endorsed political candidates. Upon his resignation, Mr. Bennett was the first choice to head the Republican National Committee—it would have been a natural transition.

Governor Bob Martinez, who cochaired the 1988 Bush Presidential campaign replaced Mr. Bennett as drug czar. Prior to his confirmation hearings, I stated that I would oppose his nomination unless he made a commitment to refrain from partisan political activity in his office. He refused to make that commitment and that was one of the reasons I opposed his nomination. Mr. Martinez, following in the footsteps of his predecessor, has also engaged in partisan political activities, most recently by criticizing Bill Clinton at the Democratic Convention as part of a so-called Republican "truth squad."

I have also made a commitment to oppose other nominees to the drug czar's office unless they agree to refrain from partisan political activity. I have opposed nominees for this reason and I will continue to do so regardless of which party controls the White House.

Some progress has been made in the effort to fight illegal drug use in the United States, most notably in the continuing decline in casual cocaine use, but there is absolutely no doubt that there is still work to do. The increases in hard-core cocaine use and heroin availability and the soaring drug-related murder toll put our modest progress in perspective. In my home State of Illinois, there have been three times as many murders so far this year than there were deaths of United States Armed Forces in the Persian Gulf war. According to law enforcement officials, these fatalities are part and parcel of the continuing drug trade that plagues so many of our neighborhoods.

And against this backdrop of bloodshed and despair, we cannot continue to let politics overshadow the important mission of the Office of National Drug Control Policy. I believe this legislation is an important step in helping to restore some respect and credibility to ONDCP. I urge my colleagues to cosponsor this legislation.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD following my statement.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 3147

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Office of National Drug Control Policy Political Activities Act of 1992".

SEC. 2. PROHIBITIONS ON POLITICAL ACTIVITIES.

(A) IN GENERAL.—Section 1003(a)(2) of the Anti-Drug Abuse Act of 1988 (21 U.S.C. 1502) is amended—

(1) by inserting "(A)" after "(2)"; and

(2) by adding at the end thereof the following new subparagraph:

"(B) The Director, the Deputy Director for Demand Reduction, the Deputy Director for Supply Reduction, and the Associate Director for National Drug Control Policy shall not take an active part in political management or in political campaigns.".

(b) DEFINITION.—Section 1010 of the Anti-Drug Abuse Act of 1988 (21 U.S.C. 1507) is amended—

(1) in paragraph (7) by striking out "and" at the end thereof;

(2) in paragraph (8) by striking out the period and inserting in lieu thereof "; and"; and

(3) by adding at the end thereof the following new paragraph:

"(9) the term 'an active part in political management or in political campaigns' means such activities as defined under section 7324(a) of title 5, United States Code.".

(c) AMEMDMENT TO HATCH ACT PROVISIONS.—Section 7324(d)(3) of title 5, United States Code, is amended by inserting before the semicolon ", except for an employee as provided under section 1003(a)(2)(B) of the Anti-Drug Abuse Act of 1988 (21 U.S.C. 1502(a)(2))".●

By Mr. PRYOR (for himself, Mr. RIEGLE, Mr. COHEN, Mr. SHELBY, Mr. GRAHAM, and Mr. DURENBERGER):

S. 3148. A bill to amend title XI of the Social Security Act to establish an Intergovernmental Task Force on Health Care Fraud and Abuse; to the Committee on Finance.

INTERGOVERNMENTAL HEALTH CARE FRAUD AND ABUSE TASK FORCE ACT

● Mr. PRYOR. Mr. President, I rise to introduce the Intergovernmental Task Force on Health Care Fraud and Abuse Act of 1992. I am joined by Senators RIEGLE, COHEN, SHELBY, GRAHAM, and DURENBERGER in introducing this legislation which will help control the widespread and costly problem of health care fraud and abuse.

I believe a major reason we have a health care crisis is unchecked fraud and abuse. For example, at a hearing of the Special Committee on Aging I chaired last fall, I heard the story of how a telephone salesman pushed unneeded and dangerous medical equipment on an elderly woman and then charged it to Medicare. She repeatedly urged her Medicare carrier to deny payment for the devices, but her pleas fell on deaf ears. This same scam perpetrated along the east coast resulted in $9 million in false billings to Medicare.

We have also heard recently that the Federal Bureau of Investigation has uncovered a scam involving high-priced prescription drugs in the Medicaid program, costing the American taxpayer billions of dollars. It has also jeopardized the health of unsuspecting Medicaid patients who were given medicines that were no longer effective.

These examples are just the tip of the iceberg. According to the General Accounting Office, losses due to fraud and abuse in our health care system may be as high as 10 percent of our nation's health care bill—amounting to more than $80 billion this year alone. Although health care providers are honest, even a small number of unscrupulous individuals can—and do—steal enormous amounts of money from our health care system.

All of us here are deeply enmeshed in the debate over how to restore affordability and access to our health care system. We have spent months trying to come up with a better way to provide health care for our nation's citizens. I believe, however, until we learn how to control health care fraud and abuse our efforts to truly reform our health care system will fail.

Throughout our health care system—Medicare, Medicaid, and the private health insurance industry—it has always been easier to simply pass the costs of fraud and abuse on to those paying the bills. When, and if, crooked health care providers are caught they simply prey on another segment of our massive and fragmented system.

At that same Aging Committee hearing I referred to a moment ago, a representative of GAO pointed out that Medicare beneficiaries are the primary source of leads on fraud and abuse, and yet about half of all their calls to Medicare are ignored. How did the representative of the Health Care Financing Administration respond to these findings? She announced that HCFA was closing down the toll-free lines beneficiaries used to make these calls. Fortunately, an uproar from Congress prevented this from happening.

With the Medicare bureaucracy asleep at the switch, fraudulent medical equipment suppliers have been stealing an estimated $200 million yearly. After multiple hearings and legislation I have cosponsored and supported, that bureaucracy is finally starting to wake up and take steps to deal with this problem.

Unfortunately, the failure to take health care fraud and abuse seriously is not limited to the Medicare bureaucracy. In my capacity as chairman of the Federal Services Subcommittee, I have also been trying for the last several years to get the Office of Personnel Management to implement antifraud controls in the area of Federal employee health benefits. These controls were mandated by legislation in 1988, and to this day OPM has not taken steps to implement the law.

Mr. President, it is high time the Federal Government showed leadership, rather than laxity, in efforts to stem the epidemic of health care fraud and abuse. It is time we made this a priority and worked with the private health insurance industry to battle this problem. Where obstacles stand in the way, it is time the administration and the private health insurance industry found acceptable ways around them.

The legislation we are proposing today to establish a Health Care Fraud and Abuse Task Force will do exactly that. Its membership will be drawn from Federal, State, and private health care sectors, and its job will be to develop and put into place strategies for combating health care fraud and abuse. The task force will coordinate antifraud and abuse activities, find ways to ensure that Medicare beneficiaries and health insurance claimants are enlisted in this effort, and advise the Congress of any changes that are needed to Federal policies to advance this campaign. This legislation stems from a GAO recommendation, and was recently introduced in the House by Representatives TED WEISS, chairman of the House Subcommittee on Human Resources and Intergovernmental Relations.

The proposed Task Force on Health Care Fraud and Abuse will not require any appropriation, yet it could save the American taxpayer and our Nation billions of dollars. I urge all of my colleagues to support this legislation.

Mr. President, I ask unanimous consent that the proposed legislation be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 3148

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Intergovernmental Health Care Fraud and Abuse Task Force Act of 1992".

SEC. 2. ESTABLISHMENT OF INTERGOVERNMENTAL HEALTH CARE FRAUD AND ABUSE TASK FORCE.

Part A of title XI of the Social Security Act (42 U.S.C. 1101 et seq.) is amended by adding at the end the following new section:

"TASK FORCE ON INTERGOVERNMENTAL HEALTH CARE FRAUD AND ABUSE

"SEC. 1144. (a) ESTABLISHMENT.—There is established a task force to be known as the 'Intergovernmental Task Force on Health Care Fraud and Abuse' (in this section referred to as the 'Task Force').

"(b) COMPOSITION.—The Task Force shall be composed of 15 members as follows:

"(1) FEDERAL OFFICIALS.—The following 6 Federal officials or the designees of such officials:

"(A) The Secretary.

"(B) The Inspector General of the Department of Health and Human Services.

"(C) The Attorney General.

"(D) The Director of the Federal Bureau of Investigation.

"(E) The Administrator of the Health Care Financing Administration.

"(F) The Comptroller General of the United States.

"(2) PUBLIC MEMBERS.—Nine members, appointed by the President, of which—

"(A) one shall be an attorney general of a State;

"(B) one shall be a representative of a State medicaid fraud control program;

"(C) one shall be a representative of health care consumers;

"(D) one shall be a representative of beneficiaries under title XVIII;

"(E) one shall be a representative of health care providers;

"(F) one shall be a representative of for-profit health insurance companies;

"(G) one shall be a representative of not-for-profit health insurance companies;

"(H) one shall be a representative of employers who provide employee health insurance; and

"(I) one shall be a representative of State insurance commissioners.

In making appointments under this paragraph of an individual who is a representative of persons or organizations, the President shall consider the recommendations of national organizations that represent such persons or organizations. The President shall report to the Congress, within 30 days after the date of the enactment of this section, the names of the members appointed under this paragraph.

"(c) TERMS.—Each member shall be appointed for the life of the Task Force. A vacancy in the Task Force shall be filled in the manner in which the original appointment was made.

"(d) FUNCTIONS OF TASK FORCE.—

"(1) IN GENERAL.—The Task Force shall—

"(A) investigate the nature, magnitude, and cost of health care fraud and abuse in the United States, and

"(B) identify and develop the most effective methods of preventing and eliminating such fraud and abuse, with particular emphasis on coordinating public and private prevention and enforcement efforts.

"(2) PARTICULARS.—The Task Force shall examine at least the following:

"(A) Mechanisms to provide greater standardization of claims administration in order to accommodate fraud detection and prevention.

"(B) Mechanisms to allow more freedom for health benefit plan administrators, health care providers, and law enforcement officials to exchange information for coordinating case development and prosecution efforts, without undermining patient and provider privacy protections or violating antitrust laws.

"(C) The need for regulation of new types of health care providers.

"(D) Criteria for physician referrals to facilities in which such physician's (or such physician's family members) have a financial interest.

"(E) The extension to private health insurers of administrative remedies currently available to public insurers.

"(F) Creating a model State statute for establishing State insurance fraud units and State laws to strengthen the ability of insurers to pursue, and recover from, fraudulent providers.

"(G) The availability of resources to law enforcement authorities to combat health care fraud and abuse.

"(H) Mechanisms for involving beneficiaries under titles XVIII and XIX and health insurance claimants in efforts to identify health care fraud and abuse.

"(I) How health care fraud and abuse litigation is organized and financed.

"(3) REPORTS.—

"(A) TRANSMISSION OF REPORTS.—The Task Force shall transmit to the Ways and Means Committee, the Energy and Commerce Committee, and the Select Committee on Aging of the House of Representatives and the Committee on Finance and the Special Committee on Aging of the Senate—

"(i) an interim report not later than 6 months after the date on which a majority of the public members of the Task Force have been appointed;

"(ii) an additional interim report not later than 12 months after the date on which a majority of the public members of the Task Force have been appointed; and

"(iii) a final report not later than 18 months after the date on which a majority of the public members of the Task Force have been appointed.

"(B) CONTENTS OF REPORTS.—Each report transmitted under subparagraph (A) shall contain a detailed statement of the findings of the Task Force as of the date of such transmission and such recommendations as the Task Force considers appropriate.

"(e) COMPENSATION AND ORGANIZATION.—

"(1) COMPENSATION OF MEMBERS.—

"(A) RATES OF PAY.—Each public member described in subsection (b)(2) who is not an officer or employee of the Federal Government is entitled to receive pay equal to the daily equivalent of the minimum annual rate of basic pay in effect for positions at level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including traveltime) during which the member is engaged in the actual performance of duties vested in the Task Force. Each member of the Task Force who is an officer or employee of the Federal Government shall serve on the Task Force without additional pay.

"(B) TRAVEL EXPENSES.—Each member of the Task Force shall be allowed travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code, while the member is away from such member's home or regular place of business in performance of services for the Task Force.

"(2) ORGANIZATION.—

"(A) QUORUM.—Nine members of the Task Force shall constitute a quorum but a lesser number may hold hearings.

"(B) CHAIRMAN.—The chairman of the Task Force shall be the Inspector General of the Department of Health and Human Services.

"(C) MEETINGS.—The Task Force shall meet at the call of the chairman or a majority of the members of the Task Force. Meetings of the Task Force shall be open to the public under section 10(a)(10) of the Federal Advisory Committee Act, except that the Task Force may conduct meetings in executive session if a majority of the members of the Task Force (a quorum being present) approve of going into executive session.

"(f) STAFF OF TASK FORCE.—Subject to rules prescribed by the Task Force, the chairman may appoint and fix the compensation of a staff director and such other additional personnel as may be necessary to carry out the functions of the Task Force, without regard to the laws, rules, and regulations governing appointment and compensation and other conditions of service in the competitive service. Upon the request of the chairman, any Federal employee who is subject to such laws, rules, and regulations, may be detailed to the Task Force to assist in carrying out the functions of the Task Force under this section, and such detail shall be without interruption or loss of civil service status or privilege.

"(g) AUTHORITY OF TASK FORCE.—

"(1) HEARINGS AND SESSIONS.—The Task Force may, for the purpose of carrying out this section, hold hearings, sit and act at times and places, take testimony, and receive evidence as the Task Force considers appropriate. The Task Force may administer oaths or affirmations to witnesses appearing before the Task Force.

"(2) OBTAINING OFFICIAL DATA.—

"(A) IN GENERAL.—The Task Force may secure directly from any department or agency of the United States information necessary to enable the Task Force to carry out this section. Upon request of the chairman of the Task Force, the head of such department or agency shall furnish such information to the Task Force.

"(B) ACCESS TO INFORMATION.—Information obtained by the Task Force is available to the public in the same manner in which information may be made available under sections 552 and 552a of title 5, United States Code.

"(3) GIFTS, BEQUESTS, AND DEVISES.—The Task Force may accept, use, and dispose of gifts, bequests, or devises of services or property for the purpose of aiding or facilitating the work of the Task Force.

"(4) MAILS.—The Task Force may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

"(5) ADMINISTRATIVE SUPPORT SERVICES.—Upon the request of the Task Force, the Secretary shall provide to the Task Force the administrative support services necessary to carry out the responsibilities of the Task Force under this section.

"(6) SUBPOENA POWER.—

"(A) IN GENERAL.—The Task Force may issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence relating to any matter which the Task Force is authorized to investigate under this section. The attendance of witnesses and the production of evidence may be required from any place within the United States and may be required at any designated place within the United States for a hearing.

"(B) FAILURE TO OBEY A SUBPOENA.—If a person refuses to obey a subpoena issued under subparagraph (A), the Task Force may apply to a United States district court for an order requiring such person to appear before the Task Force to give testimony, produce evidence, or both, relating to the matter under investigation. The application may be made within the judicial district where the hearing is conducted or where such person is found, resides, or transacts business. Any failure to obey the order of the court may be punished by the court as civil contempt.

"(C) SERVICE OF SUBPOENAS.—The subpoenas of the Task Force shall be served in the manner provided for subpoenas issued by a United States district court under the Federal Rules of Civil Procedure for the United States district courts.

"(D) SERVICE OF PROCESS.—All process of any court to which application is to be made under subparagraph (B) may be served in the judicial district in which the person required to be served resides or may be found.

"(h) TERMINATION.—The Task Force shall terminate 60 days after the date the final report is submitted under subsection (d)(3)(A)(iii).

"(i) FUNDING.—Such funds as are necessary to carry out the functions of the Task Force shall be allocated to the Task Force by the Secretary from funds otherwise appropriated for the Department of Health and Human Services.".

SEC. 3. EFFECTIVE DATE.

The amendment made by section 2 shall be effective on the date of the enactment of this Act.•

• Mr. RIEGLE. Mr. President, today I am joining with Senator PRYOR and others to introduce the Intergovernmental Health Care Fraud and Abuse Task Force Act of 1992. This bill establishes an intergovernmental commission to investigate the nature, magnitude, and cost of health care fraud and abuse in the United States, as well as identify and develop the most effective ways to prevent and eliminate fraud and abuse.

In 1992, the United States will spend about $800 billion on health care; this

represents almost 14 percent of the gross national product. The size of the health care sector and sheer volume of money involved make it an attractive and relatively easy target for some fraudulent and abusive providers. Concern over rapid growth in health care spending had triggered an examination of what value the nation is getting for its health care dollar. In a recent report by the U.S. Accounting Office, it was estimated that 10 percent of total health care spending is a result of fraud and abuse.

Examples of health care fraud and abuse can be found in all segments of the health care industry and throughout the United States. Fraud and abuse can occur through improper billing practices, including overcharging for services provided, charging for services that were never rendered, accepting bribes or kickbacks for referring patients to facilities, and performing inappropriate or unnecessary services. We have also seen instances where suppliers of health care products have defrauded insurance carriers and the government out of millions of dollars by intentionally inflating the value of services or equipment provided.

Both the public and private sectors devote a large amount of resources to detecting fraud, but efforts to detect and prosecute health care abuses are meeting with limited success. Both public health insurance programs and private health insurance companies have problems detecting fraud and abuse. In addition, they face problems associated with prosecuting fraud and abuse, and the complications associated with evolving provider ownership arrangements.

Mr. President, we need the Intergovernmental Health Care Fraud and Abuse Commission, as established in this legislation, to examine the various causes of waste in our health care system and to recommend ways to coordinate efforts by both the public and private sector to detect fraud and abuse. In addition, it will recommend effective ways to prevent such fraud and abuse from happening in the future. I have made a commitment to enacting comprehensive health care reform legislation to correct inequalities in our health care system and control health care costs. I am proud to be working with Senator PRYOR on this important first step toward controlling health care spending and improving the quality of our health care system in America.●

By Mr. BRADLEY:

S. 3149. A bill to establish a demonstration program to develop new techniques to prevent coastal erosion and preserve shorelines; to the Committee on Banking, Housing, and Urban Affairs.

LOCAL INNOVATION AND COASTAL PROTECTION ACT

● Mr. BRADLEY. Mr. President, for a long time, I've made very clear to all my interest and love of the shore and our oceans. This is where I go with my family in the summer, as many other New Jerseyans. This is where I have focused a lot of my own attention, whether it's to celebrate the shore's history and diversity by a New Jersey Coastal Heritage Trail, or to address less pleasant issues such as oil spills and medical waste.

Last winter, the New Jersey shore was battered by a series of storms. A lot of property was damaged. A lot of beach simply vanished. Partly as a result of these storms, we have an ongoing debate both in my state and nationally as to what to do and how to prevent damage.

My own research tells me we have yet a lot to learn about living on the shore. Many communities have watched their beaches steadily erode. In my state, we've spent millions to counter erosion, often with little to show for our efforts.

In 1982, and 1983, for instance, I had to get $12 million in emergency appropriations to save the access road to the Sandy Hook national recreation area. We pumped sand on the disappearing beach. By 1989, we needed another $6 million to do the same thing. Today, the Park Service is requesting yet $8 million more.

Frankly, we've been very simple-minded in our approaches—relying too often on pumped concrete or pumped sand. We've got to get new tools, new approaches. We need innovation and we need it now.

This past spring, my office was contacted by citizens from a small town on the New Jersey coast. They had been working with a local inventor and some researchers at a local technical institute. Their small experiment used two chains of concrete disks, laid across the beach, as a simple way to reverse erosion. Lo and behold, the experiment appeared to work: the beach grew.

Last spring, these folks reached out to me to help enlarge and better monitor the experiment. I wanted to help. But, other than requesting a specific line item in an Appropriations bill, there seemed to be little to encourage the town's interest and innovative spirit.

The legislation I am introducing today would change that. My bill will target and encourage innovation. It will reach out to communities, to counties, to States. It urges them to be creative, to find a better way to protect and enhance our shores.

Here's how the bill works: The bill sets up a program—managed by FEMA—which allows coastal municipalities, counties, and States to apply for Federal grants. The Federal Government is authorized to fund projects for up to $500,000. A local cost share of 25 percent is required.

The grants are intended for projects that target coastal erosion and are considered innovative or experimental. This is a program to develop new ideas first and last.

A special preference is given to those projects that use natural features, planning, temporary or portable structures to control erosion. If we can, we want to minimize the footprint of these projects and encourage flexibility. While an approach, for instance, that relied on poured concrete and embedded steel wouldn't be ruled out, it is not the first choice.

All grants would include a provision that required a complete analysis—at full government expense—of the long-term impacts and impacts to neighboring communities. We're not trying to find new Band-Aids. We're not trying to steal sand from one beach for another. We're looking for real solutions.

The grant money will be provided by the likely beneficiaries, with direct safeguards. The legislation calls for a separate fund financed by a $5 per year fee on coastal community flood insurance policies. However, this is not your normal trust fund: first, if the money is not spent appropriately and is allowed to accumulate, the authority to collect the fee is withdrawn; second, every contributing policy holder will get an annual accounting of the program—this will help spread the word about the program, and its successes and failures; and third, after four years, the program stops and all unobligated funds are returned to the policy holders.

Additionally, the bill calls on the FEMA flood insurance managers to develop a list of approved erosion reduction techniques. FEMA is authorized to allow appropriate flood insurance discounts to those communities that aggressively employ these techniques and reduce the risks of erosion.

What I've tried to do is create a small, responsible and forward looking program. I've tried to make sure that the funds will actually be there to implement the program. I've tried to safeguard those funds so they don't get hijacked to other purposes.

At some point, the Senate will turn to consider reforms to the national flood insurance program. I hope that at that time we can consider this bill and decide that it is an appropriate response to our pressing needs.

I ask unanimous consent to have the text of the legislation printed following these remarks.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 3149

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Local Innovation and Coastal Protection Act of 1992".

SEC. 2. PROGRAM AUTHORITY.

(a) IN GENERAL.—Chapter III of the National Flood Insurance Act of 1968 (42 U.S.C. 4101 et seq.) is amended by adding at the end the following new section:

"SEC. 1366. EROSION MITIGATION DEMONSTRATION PROGRAM.

"(a) IN GENERAL.—The Director shall make grants, with amounts made available from the Coastal Erosion Control Fund established under section 1367, to demonstrate the feasibility of innovative mitigation activities designed to minimize coastal erosion, preserve shorelines, and avoid environmental degradation.

"(b) ELIGIBLE RECIPIENTS.—The Director may make grants under this section to—

"(1) any State; and

"(2) any community participating in the national flood insurance program under this title that—

"(A) has suffered recurring flood damages and claims, as determined by the Director; and

"(B) is in full compliance with the requirements under the national flood insurance program.

"(c) ELIGIBLE ACTIVITIES.—

"(1) IN GENERAL.—A grant under this section may be used to develop and test innovative techniques to minimize coastal erosion and preserve shorelines.

"(2) PRIORITY.—In making grants under this section, the Director shall give a priority to eligible recipients that conduct projects to demonstrate the feasibility of techniques that—

"(A) have application to more than 1 location;

"(B) substantially broaden the applicability of proven erosion control techniques; or

"(C) avoid permanent structural alterations and rely instead on natural designs, including the use of vegetation, or temporary structures, to accomplish their goal.

"(d) APPLICATIONS.—The Director shall make grants under this section on the basis of a nationwide competition, in accordance with such application forms and procedures as the Director may establish.

"(e) MAXIMUM AMOUNT.—The total amount of any grant under this section may not exceed $500,000 for any project assisted under this section.

"(f) PROGRAM REQUIREMENTS.—

"(1) MATCHING REQUIREMENTS.—

"(A) IN GENERAL.—Except as provided in subparagraph (C), a grant under this section may not exceed 3 times the amount that the recipient certifies, as the Director shall require, that the recipient will contribute from non-Federal funds to carry out activities assisted with amounts provided under this section.

"(B) NON-FEDERAL FUNDS.—For purposes of this subsection, the term 'non-Federal funds' includes—

"(i) State or local agency funds,

"(ii) any salary paid to staff to carry out the activities of the recipient,

"(iii) the value of the time and services contributed by volunteers to carry out such activities (at a rate determined by the Director), and

"(iv) the value of any donated material or building and the value of any lease on a building.

"(C) NO MATCH REQUIRED FOR EVALUATION.—No non-Federal contribution is required for the conduct of evaluations under paragraph (2).

"(2) REPORT.—Not later than 5 years after the receipt of a grant under this section, the recipient of the grant shall transmit to the Director a report that—

"(A) evaluates the long-term effectiveness of the techniques that were developed under this section; and

"(B) assesses any impact that such techniques have had on adjacent coastal areas.

"(g) REPORT TO CONGRESS.—The Director shall transmit to the Congress an annual report that—

"(1) summarizes the erosion mitigation techniques developed pursuant to this section;

"(2) describes the status of the Coastal Erosion Control Fund established under section 1367; and

"(3) recommends any legislative or administrative action necessary to further the purposes of this section.

"(h) AUTHORIZATION.—There are authorized to be appropriated to carry out this section, from the Coastal Erosion Control Fund under section 1367, $12,500,000 for each of the fiscal years 1993 through 1996.".

SEC. 3. ESTABLISHMENT OF COASTAL EROSION CONTROL FUND.

Chapter III of the National Flood Insurance Act of 1968 (42 U.S.C. 4101 et seq.), as amended by section 2, is further amended by adding at the end the following new section:

"SEC. 1367. ESTABLISHMENT OF COASTAL EROSION CONTROL FUND.

"(a) IN GENERAL.—The Director shall establish in the Treasury of the United States a fund to be known as the Coastal Erosion Control Fund (hereafter in this section referred to as the 'Fund'), which shall be available, to the extent provided in appropriation Acts, for grants under section 1366.

"(b) CREDITS.—The Fund shall be credited with any premium surcharges assessed under section 1308(e).".

SEC. 4. INSURANCE PREMIUM MITIGATION SURCHARGE.

(a) IN GENERAL.—Section 1308 of the National Flood Insurance Act of 1968 (42 U.S.C. 4015) is amended by adding at the end the following new subsections:

"(e) Notwithstanding any other provision of this title, the Director shall assess, with respect to each contract for flood insurance coverage under this title, an annual mitigation surcharge of $5. The surcharges shall be paid into the Coastal Erosion Control Fund under section 1367, and shall not be subject to any agents' commissions, company expenses allowances, or State or local premium taxes.

"(f) The Director shall not assess any surcharge under subsection (e) if the balance of the Fund exceeds $15,000,000.

"(g) The Director shall transmit to those who paid a surcharge under subsection (e)—

"(1) an annual report describing the expenditures of the Fund during the preceding fiscal year; and

"(2) any unobligated funds that remain in the Fund at the end of fiscal year 1996.".

(b) APPLICABILITY.—The amendment made by subsection (a) shall apply to any contract for flood insurance under the National Flood Insurance Act of 1968 issued or renewed after the date of enactment of this Act.

SEC. 5. INSURANCE RATE INCENTIVES FOR EROSION MITIGATION EFFORTS.

Chapter III of the National Flood Insurance Act of 1968 (42 U.S.C. 4101 et seq.), as amended by sections 2 and 3, is further amended by adding at the end the following new section:

"SEC. 1368. INSURANCE RATE INCENTIVES FOR EROSION MITIGATION EFFORTS.

"(a) PREFERRED EROSION MITIGATION MEASURES.—The Director shall evaluate the effectiveness of the erosion mitigation measures funded under section 1366 and shall publish a list of the most effective of such measures in the Federal Register.

"(b) RATE INCENTIVES FOR COMMUNITIES.—The Director shall provide incentives in the form of adjustments in the premium rates for flood insurance coverage in areas that the Director determines have implemented erosion mitigation measures contained in the list published pursuant to subsection (a).".●

By Mr. BRYAN:

S. 3150. A bill to amend the Federal Trade Commission Act to provide authorization of appropriations, and for other purposes; to the Committee on Commerce, Science, and Transportation.

FEDERAL TRADE COMMISSION ACT AMENDMENTS

● Mr. BRYAN. Mr. President, as chairman of the Commerce Committee Consumer Subcommittee, I am proud to introduce today legislation to reauthorize the Federal Trade Commission. The Federal Trade Commission, Mr. President, is charged with the responsibility of ensuring fair competition in our Nation's markets, and protecting consumers from unfair and deceptive acts and practices. The Commission's antitrust authority is derived from its administration of the Sherman, Clayton, and Robinson–Patman antitrust acts, all of which are designed to prevent unlawful restraints on trade and commerce.

The Commission's consumer protection authority is provided to it under the Federal Trade Commission Act, which provides the FTC the authority to prevent unfair and deceptive acts and practice. These kinds of practices include telemarketing fraud, mail scams, and other methods of fraudulent contractual inducements. These types of scams, Mr. President, cost the American public billions of dollars a year. At the beginning of this Congress, Mr. President, I, along with Senator MCCAIN, introduced legislation to enhance the FTC's authority to prevent and prosecute these kinds of activities. The bill, S. 1392, was passed unanimously by the Senate last year, and is now awaiting consideration by the House of Representatives.

To ensure adequate protection of consumers, and fair competition in the marketplace, it is imperative that the Congress acts to provide the appropriate authorization for the Commission. The legislation I am introducing, Mr. President, provides an increase in the Commission's funding to ensure that it has the appropriate resources to carry out its duties, and fulfill its legislative mandates. The legislation also includes a number of provisions to enhance and clarify the Commission's authority in certain areas.

It has been over a decade since the FTC was last authorized. This, in my opinion, is too long of a period for any agency to go without an authorization.

I plan to act quickly in moving this legislation. The Consumer Subcommittee has already held a hearing to examine the provisions contained in the bill. The Commerce Committee, in the last several Congresses, has reported authorizing bills for the Commission, which have been passed by the Senate. Therefore, Mr. President, I have no doubt that once the legislation is reported that my colleagues will give their unanimous support for this legislation.●

By Mr. DECONCINI:

S. 3151. A bill to amend title 35, United States Code, to permit the filing of a provisional application for a United States patent by describing the invention on a publication in the United States, and to facilitate the filing of patent applications in foreign countries by United States inventors; to the Committee on the Judiciary.

PATENT FILING SIMPLIFICATION ACT

● Mr. DECONCINI. Mr. President, I rise to introduce legislation that will make it easier for American inventors, universities, and companies to file patent applications in the United States and abroad. I hope that this legislation will encourage discussion of the best way to reduce the cost of filing patent applications at home and abroad. It is a rather unique concept that will require much discussion and thorough analysis.

The Publication Filing Act of 1992 would assist patent applicants who publish descriptions of their inventions in technical journals or other publications before they file their application papers in the U.S. Patent and Trademark Office. The bill would treat a publication in a technical journal as a patent application filing for as long as 1 year before any papers would have to be filed in the Patent and Trademark Office, provided certain requirements were met. In other words, the publication would serve as a provisional patent application.

This would allow American applicants to postpone some of the costs of filing a normal patent application in the Patent and Trademark Office for up to a year while preserving all of their U.S. and foreign patent rights. During the year, an applicant might be able to develop the invention further or investigate its marketability or patentability. Some applicants might find by the end of the year that it would not be worthwhile for them to proceed; if so, they would have avoided the cost of filing formal papers in the Office.

To take full advantage of the bill, an inventor would publish a written description of the invention in a technical journal or other publication before revealing the invention to the public in any other manner. The publication would describe the invention in the same detail required for a normal patent application, but would not include patent "claims," an oath, or other formal components of a normal patent application. No papers would have to be filed in the Patent and Trademark Office or any fee paid to the Office at the time of publication.

Within a year after publication, the inventor would file the necessary documents and pay the necessary fees to the Patent and Trademark Office. The Office would announce the filing and open the application papers to public inspection promptly, using the procedure that is used today from announcing and opening "reissue" patent applications. This would enable members of the public who were aware of a publication to determine within a year whether the invention described in it might be subject to patent protection. If the applicant wanted to obtain foreign patents, foreign applications also would have to be filed within a year after the publication, consistent with the 1-year period for foreign filing allowed by the Paris Convention for the Protection of Industrial Property.

The main benefits to applicants from filing by publishing are as follows:

First, the bill would enable applicants to make their inventions public for a year without losing their foreign patent rights. Under existing U.S. patent law, a party who makes an invention public has up to a year to file a patent application in the U.S. Patent and Trademark office without losing U.S. rights, but loses foreign rights if the invention is made public even one day before filing an application in the U.S. In effect, my bill provides American inventors with a 1-year grade period for foreign filing.

Second, if the United States decides to switch to a first-to-file system, as contemplated in S. 2605, which I introduced earlier this year, the Publication Filing Act, by making the date of publication a filing date, would allow parties to publish their inventions without fear of another party separately making the same invention and winning the patent rights by being the first to file. Under a first-to-file system, it becomes more important to have the earliest possible filing date. The bill establishes a relatively simple and inexpensive procedure for obtaining a filing date.

This legislation does not remove any options for patenting that exist today and it would add very little to the work load of the Patent and Trademark Office. The result of the bill would be that a larger number of patent applicants would elect to publish articles than is the case today, which would result in more rapid dissemination of technological information among inventors, scientists, and engineers.

Mr. President, the idea for this bill came from a joint hearing of the Senate Judiciary Subcommittee on Patents, Copyrights and Trademarks and the House Judiciary Subcommittee on Intellectual Property and Administration of Justice held on April 30, 1992, regarding S. 2605/H.R. 4978, the Patent System Harmonization Act of 1992. The bill I am introducing today complements the legislative proposals for patent law harmonization.

The Subcommittees heard testimony on the need for harmonizing patent systems to make it less expensive for American inventors to obtain patent protection worldwide. At the hearing, I expressed my general support for simplifying patent procedures. Patent law harmonization is still some distance away. The diplomatic conference to negotiate a patent law harmonization treaty will not be reconvened by the World Intellectual Property Organization in Geneva before July 1993. Assuming an acceptable treaty can be negotiated, the process of ratifying it and enacting implementing legislation will require additional time.

The bill I am introducing today could be enacted without waiting for patent law harmonization. The changes in law proposed by this bill are compatible both with the first-to-invent system followed in the United States and with the first-to-file system that the United States presumably will adopt if it agrees to a harmonization treaty.

Mr. President, this bill will be especially helpful to universities. University-developed technology often is far more valuable if foreign rights as well as United States rights can be licensed. Thus, universities as well as companies are increasingly concerned with the need to obtain foreign patent rights.

Unlike the United States, most foreign countries do not have grade periods in their patent laws. They require "absolute novelty" of the invention at the time of filing the application. This means that any inventor who makes the invention public even 1 day before filing a patent application loses patent rights. The only way to avoid losing rights is to have a filing date in that country or a right of property in an application filed in another Paris Convention member country before the invention is made public.

This situation creates a problem for university research researchers. University researchers are often more interested in pursuing their basic conceptual research and publishing their results for the benefit of the scientific community. Thus, they regularly publish descriptions of their work at an early date. Unfortunately, once a university professor publishes an article in a technical journal describing an invention without consulting a patent attorney, foreign rights are lost.

In our joint Judiciary Committee hearing on S. 2605/H.R. 4978, Howard W. Bremer, testifying on behalf of the Association of University Technology Managers, said it would be useful for university publications to be accorded the equivalent of a priority date for

patenting purposes as of the date of publication. Mr. Bremer's suggestion was for the patent law harmonization treaty to accord a publication the equivalent of a priority date. My bill would provide this benefit through an amendment to domestic patent law without waiting for a treaty.

The bill takes advantage of a provision in article 4 of the Paris Convention which affords a right of priority to any "filing that is equivalent to a regular national filing under the domestic legislation of any country * * *." By treating a publication in the United States as a filing, an inventor would enjoy the Paris Convention right of priority, meaning that the inventor would have up to a year to file a patent application in any other Paris Convention member country, notwithstanding the absolute novelty requirements in most countries.

It is my belief that this bill is needed even if a harmonization treaty is consummated. The treaty will permit an inventor who invents second and files first to obtain the patent over an inventor who invents and publishes first but files second. By affording a filing date as of the date of publication, the bill will enable the first inventor to file a patent application quickly by publishing and thereby avoid the possibility of being beaten by a second inventor.

The bill also provides a few advantages to inventors who file only in the United States. It provides extra time to file papers in the Patent and Trademark Office after the invention had become public in some way other than a publication, such as a public use or sale. It gives a procedural advantage in patent interferences to a party who obtains an earlier filing date by publishing the invention.

I look forward to hearing the views of inventors, patent owners, professional and trade associations, and other interested parties on this legislation. I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 3151

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Patent Filing Simplification Act of 1992".

SEC. 2. PROVISIONAL APPLICATION THROUGH PUBLICATION.

Section 111 of title 35, United States Code, is amended by—

(1) by inserting "(a)" before "Application for patent"; and

(2) by adding at the end thereof the following new subsection:

"(b)(1) A publication describing the invention in the English language in the United States published or authorized by an inventor shall constitute a regularly filed application for patent, filed on the date of publication in the United States, if—

"(A) within the earlier of one year after the date of publication or one year after a foreign filing date applicable under section 119 of this title, the applicant files with the Commissioner—

"(i) a copy of the publication;

"(ii) proof of the date of publication; and

"(iii) the components of an application specified in the second sentence of subsection (a); and

"(B) the nature of the publication and the proof of the date of publication meet the requirements of regulations promulgated by the Commissioner.

"(2) Proof of receipt of a copy of a publication in the Patent and Trademark Office library shall be conclusive evidence of publication on the date of receipt. The Commissioner may establish a surcharge to recover the cost to the Office of processing applications filed by publication.".

SEC. 3. NONCONFIDENTIALITY.

Section 122 of title 35, United States Code, is amended by inserting ", except applications filed by publication in the United States under section 111(b) of this title," after "Applications for patents".

SEC. 4. DESIGN PATENTS.

(a) IN GENERAL.—Section 172 of title 35, United States Code, is amended to read as follows:

§ 172. Right of priority; novelty and loss of right; provisional application

"The right of priority provided for by section 119 of this title and the times specified in sections 102(d) and 111(b) shall be six months in the case of designs.".

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 16 of title 35, United States Code, is amended by amending the item relating to section 172 to read as follows:

"172. Right of priority; novelty and loss of right; provisional application.".

SEC. 5. EFFECTIVE DATE.

The amendments made by this Act shall take effect on January 1, 1994, and shall apply to—

(1) any publication occuring on or after January 1, 1993; and

(2) any application filed relating to such publication.●

ADDITIONAL COSPONSORS

S. 32

At the request of Mr. PELL, his name was added as a cosponsor of S. 32, a bill to increase the rate of special pension payable to persons on the Medal of Honor Roll, and for other purposes.

S. 781

At the request of Mr. SARBANES, the name of the Senator from Connecticut [Mr. DODD] was added as a cosponsor of S. 781, a bill to authorize the Indian American Forum for Political Education to establish a memorial to Mahatma Gandhi in the District of Columbia.

S. 1451

At the request of Mr. BIDEN, the name of the Senator from Connecticut [Mr. DODD] was added as a cosponsor of S. 1451, a bill to provide for the minting of coins in commemoration of Benjamin Franklin and to enact a fire service bill of rights.

S. 2236

At the request of Mr. SIMON, the name of the Senator from New York [Mr. MOYNIHAN] was added as a cosponsor of S. 2236, a bill to amend the Voting Rights Act of 1965 to modify and extend the bilingual voting provisions of the Act.

S. 2385

At the request of Mr. RIEGLE, the name of the Senator from Virginia [Mr. ROBB] was added as a cosponsor of S. 2385, a bill to amend the Immigration and Nationality Act to permit the admission to the United States of nonimmigrant students and visitors who are the spouses and children of United States permanent resident aliens, and for other purposes.

S. 2900

At the request of Mr. DOMENICI, the name of the Senator from Arizona [Mr. DECONCINI] was added as a cosponsor of S. 2900, a bill to establish a moratorium on the promulgation and implementation of certain drinking water regulations promulgated under title XIV of the Public Health Service Act (commonly known as the Safe Drinking Water Act) until certain studies and the reauthorization of the Act are carried out, and for other purposes.

S. 2909

At the request of Mr. BENTSEN, the name of the Senator from Michigan [Mr. LEVIN] was added as a cosponsor of S. 2909, a bill to amend the Tariff Act of 1930 to establish an Office of Trade and Technology Competitiveness in the International Trade Commission.

S. 2914

At the request of Mr. DURENBERGER, the names of the Senator from Missouri [Mr. DANFORTH], the Senator from Wisconsin [Mr. KASTEN], and the Senator from Indiana [Mr. LUGAR] were added as cosponsors of S. 2914, a bill to direct the Secretary of Health and Human Services to make separate payment for interpretations of electrocardiograms.

S. 2918

At the request of Mr. GRAHAM, the names of the Senator from West Virginia [Mr. ROCKEFELLER], the Senator from New Jersey [Mr. BRADLEY], the Senator from Virginia [Mr. WARNER], the Senator from Alaska [Mr. STEVENS], the Senator from South Carolina [Mr. THURMOND], the Senator from Wyoming [Mr. WALLOP], the Senator from Utah [Mr. GARN], the Senator from Oklahoma [Mr. BOREN], and the Senator from Missouri [Mr. BOND] were added as cosponsors of S. 2918, a bill to promote a peaceful transition to democracy in Cuba through the application of appropriate pressures on the Cuban Government and support for the Cuban people.

S. 2941

At the request of Mr. RUDMAN, the name of the Senator from Pennsylvania [Mr. SPECTER] was added as a cosponsor of S. 2941, a bill to provide the Administrator of the Small Business Administration continued authority to

administer the Small Business Innovation Research Program, and for other purposes.

S. 2973

At the request of Mr. CRANSTON, the name of the Senator from Illinois [Mr. DIXON] was added as a cosponscr of S. 2973, a bill to amend title 38, United States Code, to improve the care and services furnished to women veterans who have experienced sexual trauma, to study the needs of such veterans, to expand and improve other Department of Veterans Affairs programs that provide such care and services, and for other purposes.

S. 3097

At the request of Mr. GORTON, the name of the Senator from Alaska [Mr. STEVENS] was added as a cosponsor of S. 3097, a bill to amend the Comprehensive Drug Abuse Prevention and Control Act of 1970 to control the diversion of certain chemicals used in the illicit production of controlled substances, to provide greater flexibility in the regulatory controls placed on the legitimate commerce in those chemicals, and for other purposes.

S. 3119

At the request of Mr. CONRAD, the name of the Senator from North Dakota [Mr. BURDICK] was added as a cosponsor of S. 3119, a bill to establish a National Appeals Division of the Department of Agriculture to hear appeals of adverse decisions made by certain agencies of the Department, and for other purposes.

SENATE JOINT RESOLUTION 242

At the request of Mr. SPECTER, the names of the Senator from Arizona [Mr. MCCAIN], the Senator from Maine [Mr. COHEN], and the Senator from Tennessee [Mr. SASSER] were added as cosponsors of Senate Joint Resolution 242, a joint resolution to designate the week of September 13, 1992, through September 19, 1992, as "National Rehabilitation Week."

SENATE CONCURRENT RESOLUTION 126

At the request of Mr. SHELBY, the name of the Senator from Colorado [Mr. WIRTH] was added as a cosponsor of Senate Concurrent Resolution 126, a concurrent resolution expressing the sense of the Congress that equitable mental health care benefits must be included in any health care reform legislation passed by the Congress.

SENATE CONCURRENT RESOLUTION 134—COMMENDING THE PEOPLE OF THE PHILIPPINES ON THEIR GENERAL ELECTIONS

Mr. CRANSTON (for himself and Mr. LUGAR) submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. CON. RES. 134

Whereas achieving the first peaceful and constitutional succession of elected presidents is one of the most difficult and important steps in the establishment of democratic government;

Whereas the Philippines, under the leadership of President Corazon Aquino, has successfully completed this democratic transition and, thereby secured the final victory of the 1986 Peoples Power Revolution;

Whereas Fidel Ramos was a key participant in the 1986 Peoples Power Revolution that ended the Marcos dictatorship, and subsequently played a crucial role in opposing 6 abortive coup attempts that threatened to overthrow the democratically elected government;

Whereas newly-elected President Fidel Ramos will face the important challenge of continuing the difficult economic and political reforms begun by his predecessor;

Whereas despite a series of natural disasters (including earthquakes, typhoons, and volcanic eruption), the Philippine economy has turned from annual contraction under the previous regime to a yearly growth rate of 3 to 4 percent;

Whereas the American people can be proud of the role the United States has played in helping Filipinos succeed in the reestablishment of democracy in their country and in beginning free market economic reforms; and

Whereas despite the withdrawal of United States Armed Forces from Clark Air Field and Subic Bay Naval Station, the United States and the Philippines continue to be bound together by their Mutual Defense Treaty and to share important security interests in the region: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That in light of the continued strong security and economic interests shared by the United States and the Philippines as well as our deep cultural and historic ties, the Congress—

(1) congratulates Fidel Ramos on his election to the Presidency of the Philippines;

(2) commends the people of the Philippines for institutionalizing democratic government in their country by supporting peaceful and constitutional elections;

(3) urges the President of the United States to support strongly continued economic and political reform by the new Philippine Government; and

(4) believes a new era has begun in the United States-Philippine relations and recommends that a post-bases relationship be built on the cooperative pursuit of mutually beneficial goals.●

Mr. CRANSTON. Mr. President, today I am submitting a concurrent resolution on behalf of myself and Senator LUGAR commending the Philippines for completing peaceful general elections in May. These elections indicate that democracy has taken firm hold in the Philippines. The resolution also congratulates Fidel Ramos for his election to the Presidency. President-elect Ramos' victory puts the finishing touches to President Corazon Aquino's legacy of returning democratic rule to the Philippines.

Since 1986, the Philippines has overcome many obstacles in the way of its political and economic development. The resilience of this country in the face of recurring natural disasters is impressive. Its commitment to securing a democratic transition is heartening.

The resolution also recognizes that a new era in United States-Philippine relations has begun. This relationship should be built upon cooperation and mutual goals for democracy and peace in the region. It is important that the United States continue to support economic and political reform in the Philippines. The Philippines has served as a democratic example for its neighbors in the region. The United States must maintain its investment in fostering democratic growth by upholding its commitment to the multilateral assistance initiative.

At present, the Philippines future looks bright, particularly when one considers the rich oil and natural gas deposits recently discovered off its shores. President-elect Ramos is working aggressively to create an administration that will maintain stability and foster economic growth throughout the decade. The United States can help the Philippines reach its goals through continued economic support.

I urge my colleagues to join me in recognizing the Philippines accomplishments and congratulating it on its successful democratic transition.

SENATE RESOLUTION 330—ORIGINAL RESOLUTION REPORTED RELATING TO AUTHORIZATION OF MULTILATERAL ACTION IN BOSNIA-HERCEGOVINA

Mr. PELL, from the Committee on Foreign Relations, reported the following original resolution; which was placed on the calendar:

S. RES. 330

Whereas the Republic of Bosnia-Hercegovina is internationally recognized as an independent state and is a member of the United Nations and a participant in the Conference on Security and Cooperation in Europe;

Whereas attempts to bring about a permanent cessation of hostilities precipitated by Serbia and Serbian-backed forces in Bosnia-Hercegovina through negotiations have repeatedly failed;

Whereas horrible atrocities are being committed by Serbian-backed forces against the civilian population, including the "ethnic-cleansing" of regions inhabited by non-Serbs;

Whereas the United States and other Contracting Parties to the International Convention on the Prevention and Punishment of the Crime of Genocide may, under Article VIII, "call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide" or any of the other "Acts Constituting Genocide" enumerated in Article III.

Whereas officials of the International Committee of the Red Cross have been denied access to prison camps and interment camps throughout Bosnia-Hercegovina even though such officials are entitled to access to such camps under Article 143 of the 1949 Geneva Convention.

Whereas United Nations and Red Cross relief convoys carrying much needed supplies of food and medicine are being repeatedly blocked and in some cases have been attacked by Serbian-backed forces;

Whereas the Security Council of the United Nations voted unanimously to dispatch additional forces to reopen Sarajevo's airport, and the delivery of supplies of humanitarian assistance to the city's beleaguered population is taking place under the protection of these forces but with great difficulty;

Whereas the Security Council also endorsed the cease-fire plan negotiated by the European Community Envoy which would place all heavy weapons in the possession of factions in Bosnia-Hercegovina under international supervision;

Whereas the president of the democratically elected Government of Bosnia-Hercegovina has issued urgent appeals for immediate assistance from the international community; and

Whereas the situation in Sarajevo and elsewhere in Bosnia-Hercegovina has reached a critical point requiring immediate and decisive action by the international community: Now, therefore, be it *Resolved*, That it is the sense of the Senate that—

(1) the President should immediately call for an emergency meeting of the United Nations Security Council in order to authorize, under Article 42 of the United Nations Charter, all necessary means, including the use of military force, giving particular consideration to the possibility of "demonstrations" of force as specified in Article 42, to implement—

(a) a United Nations-sponsored effort to provide humanitarian relief to civilians in Bosnia-Hercegovina; and

(b) a United Nations-sponsored plan to place heavy weapons belonging to all factions in Bosnia-Hercegovina under U.N. supervision;

(2) during such meeting, the Security Council should—

(a) consider the means by which the United Nations and International Red Cross personnel shall be granted access to refugee and prisoners of war camps in all of the republics of the former Yugoslavia;

(b) review the effects on Bosnia-Hercegovina of the arms embargo imposed on all states in the former Yugoslavia pursuant to United Nations Security Council Resolution 713 and determine whether the termination or suspension of the application of that resolution to Bosnia-Hercegovina could result in increased security for the civilian population of that country; and

(c) determine how to convene a tribunal to investigate allegations of war crimes and crimes against humanity committed within the territory of the former Yugoslavia and to accumulate evidence, charge, and prepare the basis for trying individuals believed to have committed such crimes; and

(3) when requested by the President, the Congress should promptly consider authorization for any use of United States military forces pursuant to, and only pursuant to, the U.N. authorization described in paragraph 1.

SENATE RESOLUTION 331—COMMEMORATING THE HUNGARIAN NATIONAL HOLIDAY

Mr. DOLE submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 331

Whereas the Republic of Hungary on August 20, 1992, will celebrate the founding of the Hungarian state by King Saint Stephen in 1000 AD;

Whereas the Hungarian people, because of their successful democratic revolution, will be able to celebrate this national and religious holiday for the first time since the Communists consolidated power in Hungary in 1947;

Whereas Hungarian-Americans, who have made major contributions to the prosperity and well-being of the United States, will join joyously in this celebration: Now, therefore, be it

Resolved, That the United States Senate hereby congratulates the Republic of Hungary on the Hungarian National Holiday and extends to Hungary its best wishes for continued success in establishing a free, prosperous, and democratic nation.

Mr. DOLE. Mr. President, I rise today to submit a resolution to commemorate the founding of the Hungarian state by King Saint Stephen in the year 1000 AD.

The Hungarian people have waited many long years—almost 50 years—to celebrate this national and religious holiday. And, having successfully ousted the Communist government that held them hostage for so many years, the Hungarian people will once again honor this festive holiday on August 20.

Mr. President, I am confident that the entire Senate membership joins me in congratulating the Hungarian Government and the Hungarian people on their national holiday. We also extend our congratulations to Hungarian-Americans, who had made major contributions to the success and well-being of the United States of America.

AMENDMENTS SUBMITTED

DEPARTMENT OF THE INTERIOR AND RELATED AGENCIES APPROPRIATIONS, FISCAL YEAR 1993

CRAIG (AND OTHERS) AMENDMENT NO. 2903

Mr. CRAIG (for himself, Mr. DECONCINI, Mr. GORTON, Mr. STEVENS, Mr. BURNS, and Mr. DOMENICI) proposed an amendment to amendment No. 2902 proposed by Mr. FOWLER to the bill (H.R. 5503) making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1993, and for other purposes, as follows:

In lieu of the matter proposed to be inserted, insert the following new section:

SEC. . FOREST SERVICE APPEALS.

(a) IN GENERAL.—In accordance with this section, the Secretary of Agriculture shall modify the procedure for appeals of decisions of the Forest Service.

(b) RIGHT TO APPEAL.—Not later than 30 days after the date of issuance of a decision of the Forest Service, a person who was involved in the public comment process for the underlying decision may file an appeal.

(c) DISPOSITION OF APPEAL.—

(1) INFORMAL DISPOSITION.—

(A) IN GENERAL.—Subject to subparagraph (B), a designated employee of the Forest Service shall offer to meet with each individual who files an appeal in accordance with subsection (b) and attempt to dispose of the appeal.

(B) TIME AND LOCATION OF MEETING.—Each meeting in accordance with subparagraph (A) shall take place—

(i) not later than 15 days after the date of filing of the appeal; and

(ii) at a location designated by the Chief of the Forest Service that is in the vicinity of the lands affected by the decision.

(2) FORMAL REVIEW.—If the appeal is not disposed of in accordance with paragraph (1), an appeals hearing officer designated by the Chief of the Forest Service shall review the appeal and recommend to the official responsible for the decision the appropriate disposition of the appeal. The official shall decide the appeal.

(3) TIME FOR DISPOSITION.—Disposition of appeals under this subsection shall be completed not later than 30 days after the date of filing of the appeal.

(d) STAY.—Unless the Chief of the Forest Service determines that an emergency situation exists with respect to a decision of the Forest Service, implementation of the decision shall be stayed during the period beginning on the date of the decision and ending on—

(1) if no appeal of the decision is filed, 30 days after the date of filing of the appeal; or

(2) if an appeal of the decision is filed, the date of disposition of the appeal under subsection (c).

GORTON (AND OTHERS) AMENDMENT NO. 2904

Mr. GORTON (for himself, Mr. PACKWOOD, Mr. CRAIG, Mr. SEYMOUR, Mr. BURNS, and Mr. MURKOWSKI) proposed an amendment to the bill H.R. 5503, supra, as follows:

On page 67 of the bill, strike lines 9 through 11 and insert in their place the following:

"FUNDING OF FOREST HEALTH IMPROVEMENT PROJECTS.—To meet the forest health emergency now experienced on many of the Federal forest lands, the Secretary of Agriculture on National Forest System lands and the Secretary of Interior on public lands shall expend such sums as are necessary within available funds from the salvage sale fund authorized by section 14(h) of the National Forest Management Act of 1976 (16 U.S.C. 472a(h)) and the salvage sale trust fund within the Bureau of Land Management established by this Act. Such projects shall employ a combination of multi-resource management practices, treatments, and protections. Such projects shall be designed to accomplish the objective of improving forest health through management actions that improve stand density and composition, salvage dead and dying timber, remove or treat sources of infection or infestation, reduce excess fuels, and leave remaining vegetation in a condition designed to increase its opportunity to contribute to a healthy, productive ecosystem. In the execution of such projects, the Secretary of Agriculture and the Secretary of the Interior are authorized to use the authorities in the Knutson-Vandenberg Act of 1930 (16 U.S.C. 576) as amended, the provisions of the National Forest Management Act of 1976 (16 U.S.C. 472a), as amended, the Federal Land Policy and Management Act of 1976 (16 U.S.C. 1701 et seq.), and other applicable law.

"ENVIRONMENTAL ANALYSIS.—Any forest health improvement project found by the Secretary of Agriculture or the Secretary of the Interior to be not inconsistent with the

long-term management goals and objectives of a land management plan for the administrative unit in which the activity is to occur shall be deemed not to be a major Federal action significantly affecting the quality of the human environment for the purpose of subsection (C) of section 102(2) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)). The Secretary of Agriculture and the Secretary of the Interior shall establish by regulation a policy providing for categorical exclusions from requirements established pursuant to such section for certain types of salvage based on the extent to which the salvage includes selective thinning, minimal building of new roads, minimum loss of healthy standing timber, and other justifying factors.

"ADMINISTRATIVE REVIEW—Unless the Secretary of Agriculture or the Secretary of the Interior specifically provide for administrative review, citizens of the United States may seek immediate judicial review of a decision by the respective Secretary to conduct a forest health improvement project in the district court of the United States for the district in which the project is to occur. If the respective Secretary provides an opportunity for administrative review, standing to bring an administrative appeal of a forest health improvement project shall be available only to persons who have raised the issue or issues for which administrative review is sought in written or oral comment submitted during the preparation of the project.

"SPOTTED OWL FORESTS.—Notwithstanding the Forest Service Record of Decision of March 3, 1992, 57 Fed. Reg. 8621 (March 11, 1992), the National Forest Management Act of 1976, and the National Environmental Policy Act of 1969, the Forest Service is authorized to allow salvage timber sales in Habitat Conservation Areas and other suitable habitat for the northern spotted owl on the spotted owl forests in Washington, Oregon and California outside any units of the National Wilderness Preservation System and other areas in which timber harvesting is expressly prohibited by statute, unless such salvage will adversely affect spotted owl habitat as determined by the Secretary of Agriculture.

JEFFORDS (AND METZENBAUM) AMENDMENT NO. 2905

Mr. JEFFORDS (for himself and Mr. METZENBAUM) proposed an amendment to the bill H.R. 5503, supra, as follows:

At the appropriate place, insert the following new section:

SEC. . Section 6 of the Public Rangelands Improvement Act of 1978 (43 U.S.C. 1905 and 1751) is amended by adding at the end the following new subsections:

"(c)(1) Notwithstanding any other provision of law, the Secretary of Agriculture, with respect to national forest lands in the 16 contiguous western States (except National Grasslands) administered by the Forest Service where domestic livestock grazing is permitted under applicable law, and the Secretary of the Interior with respect to public domain lands administered by the Bureau of Land Management where domestic livestock grazing is permitted under applicable law, shall establish for the grazing season that commences on March 1, 1993, and ends on February 28, 1994, a domestic livestock grazing fee equal to $2.40 per animal unit month.

"(2) The grazing fee established in paragraph (1) shall apply to grazing permits on Federal lands managed by the Forest Service (with the exception of National Grasslands) or the Bureau of Land Management, except that:

"(A) If a grazing applicant or permittee presents certified evidence that the applicant or permittee owns or controls, whether through direct ownership or through leasing or management agreements a total of fewer than (i) 500 head of cattle or horses or (ii) 2,500 head of sheep or goats, or both, on grazing land under all types of ownership, including Federal, State, local, and private, the fee shall be the greater of—

"(i) the fee determined by applying the formula described in subsection (a); or

"(ii) $1.92 per animal unit month.

"(B) All livestock owned or controlled by an applicant or permittee, whether in one or several States and whether grazed on Federal lands or not, shall be included in calculating the total number of livestock under paragraph (1).

"(C)(i) Subject to clause (ii), the Forest Service and the Bureau of Land Management shall determine by regulation the type of certified evidence applicants or permittees must provide to reflect aggregate ownership or control of domestic livestock for the purpose of determining the appropriate grazing fee.

"(ii) Proofs of livestock ownership under applicable State laws may include bills of sale, brand inspection records, State and local property tax assessments, incorporation papers, and lease agreements.

"(D) For purposes of this subsection, individual members of a grazing association shall be considered as individual applicants or permittees for the purpose of determining the appropriate fee level to be assessed.

"(E) Executive Order No. 12548, dated February 14, 1986, shall not apply to grazing fees established pursuant to this Act.

"(d) The grazing advisory boards established pursuant to an action of the Secretary, notice of which was published in the Federal Register on May 14, 1986 (51 Fed. Reg. 17874), are abolished. The advisory functions exercised by the boards, shall, after the date of enactment of this subsection, be exercised only by the appropriate councils established pursuant to section 309 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1739).

"(e)(1) Funds appropriated pursuant to section 5 or any other provision of law relating to disposition of the Federal share of receipts from fees for grazing on public domain lands or National Forest lands in the 16 contiguous western States shall be used for—

"(A) restoration and enhancement of fish and wildlife habitat;

"(B) implementation and enforcement of applicable land management plans, allotment plans, and regulations regarding the use of the lands for domestic livestock grazing;

"(C) land and range improvements and conservation practices on public lands used for the purposes of grazing, including restoration and improved management of riparian areas; and

"(D) increased production of forage and browse for livestock and wildlife habitat needs.

"(2) The funds referred to in paragraph (1) shall be distributed as the Secretary concerned considers advisable after consultation and coordination with the advisory councils established pursuant to section 309 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1739) and other interested parties, including local conservation districts in areas where applicable.".

LOTT AMENDMENT NO. 2906

(Ordered to lie on the table.)

Mr. LOTT submitted an amendment intended to be proposed by him to the bill H.R. 5503, supra, as follows:

On page 91, line 14, strike "$144,245,000" and insert in lieu thereof "$144,110,000".

On page 20, line 21, strike "$206,445,000" and insert in lieu thereof "$206,590,000".

On page 21, line 3, following "1989" insert, ": *Provided*, That of the funds provided under this heading, $135,000 shall be available for exhibit design and archaeological survey for the continued preparation of the Corinth, Mississippi site development.".

BOND AMENDMENT NO. 2907

Mr. BYRD (and Mr. NICKLES) (for Mr. BOND) proposed an amendment to the bill H.R. 5503, supra, as follows:

On page 66, between lines 3 and 4, insert the following new paragraph:

None of the funds made available under this Act may be used to purchase, procure, or upgrade computer hardware or software used by an officer or employee of the Forest Service prior to the implementation, by the Secretary of Agriculture, of reforms of the field structure and organization of the Department of Agriculture.

WALLOP AMENDMENT NO. 2908

Mr. BYRD (and Mr. NICKLES) (for Mr. WALLOP) proposed an amendment to the bill H.R. 5503, supra, as follows:

On page 2, line 12, strike "545,517,000" and insert "$545,665,000".

On page 18, line 24, strike "$989,330,000" and insert "$989,282,000".

STEVENS AMENDMENT NO. 2909

Mr. STEVENS proposed an amendment to the bill H.R. 5503, supra, as follows:

Insert at the appropriate place in the bill:

"Notwithstanding any other provision of law, the Secretary of the Interior is authorized to exchange a property, located at 132-140 Manor Avenue, Anchorage, Alaska, for property that meets requirements of the United States Geological Survey located in Anchorage Alaska owned by AHPI/Municipality of Anchorage. This exchange will be based on terms and conditions determined by the Secretary to be in the best interests of the United States Government. Either party is authorized to equalize the value of the properties involved through payment or receipt of cash or other consideration.".

REID (AND BUMPERS) AMENDMENT NO. 2910

Mr. REID (for himself and Mr. BUMPERS) proposed an amendment to the bill H.R. 5503, supra, as follows:

At the end of the bill, add the following section:

SEC. . NOTWITHSTANDING ANY OTHER PROVISION OF LAW.

(a) FINANCIAL GUARANTEE.—Prior to the commencement of any mineral activities conducted pursuant to the general mining laws causing more than minimal disturbance to the environment, the claimant shall furnish a bond, surety, or other financial guarantee, which may include, but not be limited to, the use of bond pools, in an amount as de-

termined by the Secretary of not less than $200 or more than $2,500 per acre, conditioned upon compliance with the requirements of this Act and other applicable laws and regulations. Regardless of the financial limits of the preceding sentence, the bond, surety, or other financial guarantee shall not be less than the estimated cost to complete the reclamation of the disturbed land.

(b) REVIEW.—The Secretary shall review the bond, surety, or other financial guarantee for sufficiency not less than every five years.

(c) PHASED GUARANTEES.—The Secretary may reduce proportionately the amount of bond, surety, or other financial guarantee upon determination that any portion of reclamation is completed in accordance with this Act and applicable laws and regulations.

(d) RELEASE.—The Secretary shall provide for public notice prior to any reduction in, or final release of, a bond or other financial guarantee.

BILINGUAL VOTING ACT

SIMPSON AMENDMENT NO. 2911

Mr. SIMPSON proposed an amendment to the bill (H.R. 4312) to amend the Voting Rights Act of 1965 with respect to bilingual election requirements, as follows:

On page 2, line 3, strike "2007" and insert "1997".

On page 2, line 18, strike "10,000" and insert "20,000".

At the end of the bill, add the following:

SEC. . REPORT.

(a) REPORT.—Not later than May 1, 1997, the Director of the Census, in cooperation with the Attorney General, shall prepare and submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate a report that shall include the following information:

(1) Voting participation rates among each language minority group, both on a national basis and for each covered jurisdiction.

(2) Voting participation rates among all voters as a group and English-speaker voters as a group, both on a national basis and for each covered jurisdiction.

(3) Any increases or decreases in voting participation for each of the groups described in paragraphs (1) and (2), both on a national basis and for each covered jurisdiction.

(4) The names and qualifying information for each State, and each political subdivision, in which at least 10,000 persons are covered individuals.

(5) The names and qualifying subdivision, in which at least 20,000 persons are covered individuals.

(6) The names and qualifying information for each covered jurisdiction.

(7) For each State, political subdivision, or covered jurisdiction described in paragraph (4), (5), or (6), information regarding—

(A) whether multilingual voting assistance is available in the State, political subdivisions, or jurisdiction; and

(B) if such assistance is available—

(i) the type of such assistance that is available; and

(ii) the number of persons who utilize such assistance, as an absolute number and as a percentage of the general population and of language minority groups.

(b) Definitions.—As used in this section:

(1) COVERED INDIVIDUAL.—The term "covered individual" means an individual who is—

(A) a citizen described in clause (i) of Section 203(b)(2)(A) of the Voting Rights Act of 1965 (42 U.S.C. 1973aa-1a(b)(2)(A));

(B) a citizen in a language minority described in clause (ii) of such section; and

(C) a citizen in a covered jurisdiction.

(2) COVERED JURISDICTIONS.—The term "covered jurisdiction" means a jurisdiction that is

(A) a covered State or covered political subdivision under paragraph (2)(A) of section 203(b) of the Voting Rights Act of 1965; and

(B) is not excluded from the application of such section under paragraph (2)(B) of such section.

(3) LANGUAGE MINORITY GROUP.—The term "language minority group" has the meaning given the term in section 203(e) of the Voting Rights Act of 1965.

SEC. . STUDY OF VOTING FRAUD.

(a) STUDY.—The Attorney General shall conduct a study, covering all covered jurisdictions (as defined in section (b)(2)), to determine—

(1) whether multilingual voting assistance under section 203 of the Voting Rights Act of 1965 has been used, or implicated in efforts, to violate other laws, particularly laws requiring the use of documentary identification and citizenship as a requirement for voting; and

(2) if so, the extent to which the multilingual voting assistance has been so used or implicated.

(b) REPORT.—Not later than June 1, 1995, the Attorney General shall submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate a report setting forth the findings of such study.

INDIAN TRIBAL COURTS

GORTON AMENDMENT NO. 2912

Mr. SIMPSON (for Mr. GORTON) proposed an amendment to the bill (S. 1752) to provide for the development, enhancement, and recognition of Indian tribal courts, as follows:

At the end of the bill, add the following new title:

TITLE IV—STUDY OF TRIBAL/FEDERAL COURT REVIEW

SEC. 401. STUDY.

(a) TRIBAL/FEDERAL COURT REVIEW.—A comprehensive study shall be conducted in accordance with subsection (b), of the treatment by tribal courts of matters arising under the Indian Civil Rights Act (25 U.S.C. 1301 et seq.) and of other Federal laws for which tribal courts have jurisdictional authority and regulations promulgated by Federal agencies pursuant to the Indian Civil Rights Act and other Acts of Congress. The study shall include an analysis of those Indian Civil Rights Act cases that were the subject of Federal court review from 1968 to 1978 and the burden, if any, on tribal governments, tribal courts, and Federal courts of such review. The study shall address the circumstances under which Federal court review of actions arising under the Indian Civil Rights Act may be appropriate or warranted.

(b) TRIBAL/FEDERAL COURT REVIEW STUDY PANEL.—The study required in subsection (a) shall be conducted by the Tribal/Federal Court Review Study Panel in consultation with tribal governments.

SEC. 402. TRIBAL/FEDERAL COURT REVIEW STUDY PANEL.

(a) COMPOSITION.—The Tribal/Federal Court Review Study Panel shall consist of—

(1) four representatives of tribal governments, including tribal court judges, two of whom shall be appointed by the Speaker of the House of Representatives and two of whom shall be appointed by the President pro tempore of the Senate; and

(2) four members of the United States Court of Appeals courts who shall be appointed by the Director of the Administrative Office of the United States Courts.

(b) PERSONNEL.—The Tribal/Federal Court Review Study Panel may employ, on a temporary basis, such personnel as are required to carry out the provisions of this title.

(c) FINDINGS.—The Tribal/Federal Court Review Study Panel, not later than the expiration of the 12-month period following the date on which moneys are made available to carry out this title, shall submit its findings and recommendations to—

(1) the Congress;

(2) the Tribal Judicial Conference; and

(3) the Director of the Administrative Office of the United States Courts.

(d) TERMINATION.—Not later than 30 days after the Panel has submitted its findings and recommendations under subsection (c), the Panel shall cease to exist.

SEC. 403. APPROPRIATIONS.

For purposes of carrying out the provisions of this title there are authorized to be appropriated such sums as may be necessary.

SEC. 404. PROHIBITION ON GRANTS.

Notwithstanding any other provision of this Act, no grants shall be made by the Conference under this Act after the expiration of the 18-month period following the date of enactment of this Act, unless the Tribal/Federal Court Review Study Panel has submitted its findings and recommendations to the Congress in accordance with subsection (c) of section 402 and a period of 60 days has expired following the submission of such findings and recommendations.

SMALL BUSINESS CREDIT CRUNCH RELIEF ACT

BUMPERS (AND KASTEN) AMENDMENT NO. 2913

Mr. SIMON (for Mr. BUMPERS, for himself and Mr. GORTON) proposed an amendment to the bill (H.R. 4111) to amend the Small Business Act to provide additional loan assistance to small businesses, and for other purposes, as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Small Business Credit and Business Opportunity Enhancement Act of 1992".

(b) TABLE OF CONTENTS.—The table of contents for this Act shall be as follows:

TITLE I—IMPROVED ACCESS TO CREDIT

Subtitle A—Section 7(a) Guaranteed Loan Program

SEC. 101. SHORT TITLE.

This subtitle may be cited as the "Small Business Credit Crunch Relief Act of 1992".

SEC. 102. AUTHORIZATIONS.

Section 20 of the Small Business Act (15 U.S.C. 631 note) is amended—

(1) in subsection (a), by adding at the end the following new paragraph:

"(4) Except as may be otherwise specifically provided by law, the amount of deferred participation loans authorized in this section—

"(A) shall mean the net amount of the loan principal guaranteed by the Small Business Administration (and does not include any amount which is not guaranteed); and

"(B) shall be available for a national program, except that the Administration may use not more than an amount equal to 10 percent of the amount authorized each year for any special or pilot program directed to identified sectors of the small business community or to specific geographic regions of the United States.";

(2) by amending subsection (e)(2) to read as follows:

"(2) For the programs authorized by this Act, the Administration is authorized to make $5,978,000,000 in deferred participation loans and other financing. Of such sum, the Administration is authorized to make—

"(A) $5,200,000,000 in general business loans, as provided in section 7(a);

"(B) $53,000,000 in loans, as provided in section 7(a)(12)(B); and

"(C) $725,000,000 in financings, as provided in section 7(a)(13) and section 504 of the Small Business Investment Act of 1958.";

(3) amending subsection (g)(2) to read as follows:

"(2) For the programs authorized by this Act, the Administration is authorized to make $7,030,000,000 in deferred participation loans and other financings. Of such sum, the Administration is authorized to make—

"(A) $6,200,000,000 in general business loans as provided in section 7(a);

"(B) $55,000,000 in loans, as provided in section 7(a)(12)(B); and

"(C) $775,000,000 in financings, as provided in section 7(a)(13) and section 504 of the Small Business Investment Act of 1958."; and

(4) by amending subsection (i)(2) to read as follows:

"(2) For the programs authorized by this Act, the Administration is authorized to make $8,083,000,000 in deferred participation loans and other financings. Of such sum, the Administration is authorized to make—

"(A) $7,200,000,000 in general business loans, as provided in section 7(a);

"(B) $58,000,000 in loans, as provided in section 7(a)(12)(B); and

"(C) $825,000,000 in financings, as provided in section 7(a)(13) and section 504 of the Small Business Investment Act of 1958.".

SEC. 103. BUY AMERICAN PREFERENCE.

In providing financial assistance with amounts appropriated pursuant to the amendments made by this Act, the Administrator of the Small Business Administration shall, when practicable, accord preference to small business concerns which use or purchase equipment and supplies produced in the United States. The Administrator shall also encourage small business concerns receiving such assistance to purchase such equipment and supplies.

SEC. 104. STATE LIMITATIONS ON INTEREST RATES.

Section 7(a)(4) of the Small Business Act (15 U.S.C. 636(a)(4)) is amended by striking "The rate of interest on financings made on a deferred basis shall be legal and reasonable but" and inserting the following: "Notwithstanding the provisions of the constitution of any State or the laws of any State limiting the rate or amount of interest which may be charged, taken, received, or reserved, the maximum legal rate of interest on any financing made on a deferred basis pursuant to this subsection".

Subtitle B—Microloan Demonstration Program Amendments

SEC. 111. SHORT TITLE.

This subtitle may be cited as the "Microlending Expansion Act of 1992".

SEC. 112. FINDINGS.

The Congress finds that—

(1) nationwide, there are many individuals who possess skills that, with certain short-term assistance, could enable them to become successfully self-employed;

(2) many talented and skilled individuals who are employed in low-wage occupations could, with sufficient opportunity, start their own small business concerns, which could provide them with an improved standard of living;

(3) most such individuals have little or no savings, a nonexistent or poor credit history, and no access to credit or capital with which to start a business venture;

(4) women, minorities, and individuals residing in areas of high unemployment and high levels of poverty have particular difficulty obtaining access to credit or capital;

(5) providing such individuals with small-scale, short-term financial assistance in the form of microloans, together with intensive marketing, management, and technical assistance, could enable them to start or maintain small businesses, to become self-sufficient, and to raise their standard of living;

(6) banking institutions are reluctant to provide such assistance because of the administrative costs associated with processing and servicing the loans and because they lack experience in providing the type of marketing, management, and technical assistance needed by such borrowers;

(7) many organizations that have had successful experiences in providing microloans and marketing, management, and technical assistance to such borrowers exist throughout the Nation; and

(8) loans from the Federal Government to intermediaries for the purpose of relending to start-up, newly established and growing small business concerns are an important catalyst to attract private sector participation in microlending.

SEC. 113. MICROLOAN DEMONSTRATION PROGRAM AMENDMENTS.

(a) IN GENERAL.—Section 7(m) of the Small Business Act (15 U.S.C. 636(m)) is amended—

(1) in paragraph (1)(A)—

(A) by amending clause (i) to read as follows:

"(i) to assist women, low-income, and minority entrepreneurs and business owners and other such individuals possessing the capability to operate successful business concerns, and, in particular, those entrepreneurs and business owners located in labor surplus areas or low-income areas;"; and

(B) in clause (iii)(I), by inserting ", particularly loans in amounts averaging not more than $5,000," after "small-scale loans";

(2) in paragraph (3)(A)—

(A) by striking "As part of" and inserting the following:

"(i) IN GENERAL.—As part of";

(B) by redesignating clauses (i) through (viii) as subclauses (I) through (VIII), respectively;

(C) in subclause (III), as redesignated, by striking "economic and unemployment" and inserting "economic, poverty, and unemployment";

(D) by amending subclause (VIII), as redesignated, to read as follows:

"(VIII) any plan to involve other technical assistance providers (such as counselors from the Service Corps of Retired Executives or small business development centers) or private sector lenders in assisting selected business concerns."; and

(E) by adding at the end the following:

"(ii) SELECTION OF INTERMEDIARIES.—In selecting intermediaries to participate in the program established under this subsection, the Administration shall give priority to those applicants that provide loans to small business concerns located in labor surplus areas or in low-income areas.";

(3) by amending paragraph (3)(F) to read as follows:

"(F) LOAN DURATION; INTEREST RATES.—

"(i) LOAN DURATION.—Loans made by the Administration under this subsection shall be for a term of 10 years.

"(ii) APPLICABLE INTEREST RATES.—Except as provided in clauses (iii) and (iv), loans made by the Administration under this subsection to an intermediary shall bear an interest rate equal to one-half of 1 percentage point below the rate determined by the Secretary of the Treasury for obligations of the United States with a period of maturity of 5 years, adjusted to the nearest one-eighth of 1 percent.

"(iii) RATES APPLICABLE TO LOANS IN LABOR SURPLUS AND LOW-INCOME AREAS.—Loans made by the Administration to an intermediary that predominantly serves small business concerns and entrepreneurs located in labor surplus and low-income areas shall bear an interest rate that is 1.25 percentage points below the rate determined by the Secretary of the Treasury for obligations of the United States with a period of maturity of 5 years, adjusted to the nearest one-eighth of 1 percent.

"(iv) RATES APPLICABLE TO CERTAIN SMALL LOANS.—Loans made by the Administration to an intermediary described in clause (iii) that makes loans to small business concerns and entrepreneurs averaging not more than $5,000, shall bear an interest rate that is 2 percentage points below the rate determined by the Secretary of the Treasury for obligations of the United States with a period of maturity of 5 years, adjusted to the nearest one-eighth of 1 percent.

"(v) RATES APPLICABLE TO MULTIPLE SITES OR OFFICES.—The interest rate prescribed in clause (ii), (iii), or (iv) shall apply to each separate loan-making site or office of 1 intermediary only if such site or office meets the requirements of that clause.

"(vi) RATE BASIS.—The applicable rate of interest under this paragraph shall—

"(I) be applied retroactively for the first year of an intermediary's participation in the program, based upon the actual lending practices of the intermediary as determined by the Administration prior to the end of such year; and

"(II) be based in the second and subsequent years of an intermediary's participation in the program, upon the actual lending practices of the intermediary during the term of the intermediary's participation in the program.

"(vii) COVERED INTERMEDIARIES.—The interest rates prescribed in this subparagraph shall apply to all loans made to intermediaries under this subsection on or after October 28, 1991.";

(4) in paragraph (4)—

(A) in subparagraph (A), by striking "Subject to" and inserting "Except as otherwise provided in subparagraphs (C) and (D) and subject to"; and

(B) by adding at the end the following:

"(C) GRANTS FOR INTERMEDIARIES IN LABOR SURPLUS AREAS AND LOW-INCOME AREAS.—

"(i) IN GENERAL.—Except as otherwise provided in subparagraph (D), each intermediary that receives a loan under paragraph (1)(B)(i) and that predominantly serves small business concerns and entrepreneurs located in labor surplus or low-income areas shall be eligible to receive a grant in an amount equal to 25 percent of the total outstanding balance of loans made to it under this subsection to provide marketing, management, and technical assistance to small business concerns that are borrowers under this subsection.

"(ii) CONTRIBUTION.—As a condition of any grant made under clause (i), the Administration shall require the intermediary to contribute an amount equal to 25 percent of the amount of the grant, obtained solely from non-Federal sources. In addition to cash or other direct funding, the contribution may include indirect costs or in-kind contributions paid for under non-Federal programs.

"(D) ADDITIONAL TECHNICAL ASSISTANCE GRANTS FOR MAKING CERTAIN LOANS.—

"(i) IN GENERAL.—Each intermediary that meets the requirements of subparagraph (C) and that has a portfolio of loans made under this subsection that averages not more than $5,000 during the period of the intermediary's participation in the program shall be eligible to receive a grant equal to 5 percent of the total outstanding balance of loans made to the intermediary under this subsection, in addition to grants made under subparagraph (C)(i).

"(ii) PURPOSES.—A grant awarded under clause (i) may be used to provide marketing, management, and technical assistance to small business concerns that are borrowers under this subsection.

"(iii) CONTRIBUTION EXCEPTION.—The contribution requirements in subparagraph (C)(ii) do not apply to grants made under this subparagraph.

"(E) ELIGIBILITY FOR MULTIPLE SITES OR OFFICES.—The eligibility for a grant described in subparagraph (A), (C), or (D) shall be determined separately for each loan-making site or office of 1 intermediary.";

(5) in paragraph (5)(A), by striking "2 grants" and inserting "6 grants";

(6) in paragraph (6), by amending subparagraph (C) to read as follows:

"(C) INTEREST LIMIT.—Notwithstanding any provision of the laws of any State or the constitution of any State pertaining to the rate or amount of interest that may be charged, taken, received, or reserved on a loan, the maximum rate of interest to be charged on a microloan funded under this subsection shall not exceed the rate of interest applicable to a loan made to an intermediary by the Administration—

"(i) in the case of a loan made by the intermediary to a small business concern or entrepreneur other than those described in clauses (ii) and (iii), by more than 7 percentage points;

"(ii) in the case of a loan of more than $5,000 made by the intermediary to a small business concern or entrepreneur located in a labor surplus or low-income area, by more than 7.75 percentage points; and

"(iii) in the case of a loan of not more than $5,000 made by the intermediary to a small business concern or entrepreneur located in a labor surplus or low-income area, by more than 9.5 percentage points.";

(7) in paragraph (7)—

(A) in subparagraph (A), by striking "35 microloan programs" and inserting "60 microloan programs";

(B) in subparagraph (B), by striking "25 additional" and inserting "50 additional";

(C) by amending subparagraph (C)(i) to read as follows:

"(i) be awarded more than 4 microloan programs in the first 2 years of the demonstration program nor more than 2 microloan programs in any year thereafter;";

(D) in subparagraph (C)(ii), by striking "$1,000,000" and inserting "$1,500,000"; and

(E) in subparagraph (C)(iii), by striking "$1,500,000" and inserting "$2,500,000";

(8) by amending paragraph (8) to read as follows:

"(8) ASSISTANCE TO RURAL AREAS, LABOR SURPLUS AREAS, AND LOW-INCOME AREAS.—In funding microloan programs, the Administration shall ensure that not less than 70 percent of the programs funded under this subsection will provide microloans to small business concerns and entrepreneurs located in rural areas, labor surplus areas, and low-income areas.";

(9) by redesignating paragraphs (9) and (10) as paragraphs (10) and (11), respectively;

(10) by inserting after paragraph (8) the following:

"(9) TECHNICAL ASSISTANCE FOR INTERMEDIARIES.—

"(A) IN GENERAL.—The Administration may procure technical assistance for intermediaries participating in the Microloan Demonstration Program to ensure that such intermediaries have the knowledge, skills, and understanding of microlending practices necessary to operate successful microloan programs.

"(B) ASSISTANCE AMOUNT.—The Administration shall transfer 3 percent of its annual appropriation for loans under this subsection to the Administration's Salaries and Expense Account for the specific purpose of providing 1 or more technical assistance grants to experienced microlending organizations to achieve the purpose set forth in subparagraph (A)."; and

(11) in paragraph (11), as redesignated—

(A) by amending subparagraph (A) to read as follows:

"(A) the term 'intermediary' means—

"(i) a private, nonprofit entity;

"(ii) a nonprofit community development corporation;

"(iii) a consortium of private, nonprofit organizations or nonprofit community development corporations; or

"(iv) a quasi-governmental economic development entity (such as a planning and development district), other than a State, county, municipal government, or any agency thereof, if—

"(I) no application is received from an eligible nonprofit organization; or

"(II) the Administration determines that the needs of a region or geographic area are not adequately served by an existing, eligible nonprofit organization that has submitted an application,

that seeks to borrow or has borrowed funds from the Administration to make microloans to small business concerns under this subsection;";

(B) by striking the period at the end of subparagraph (C) and inserting a semicolon; and

(C) by adding at the end the following:

"(D) the term 'low-income area' means—

"(i) a county or parish; or

"(ii) a census tract or block numbering area within a central city of a metropolitan area,

in which not less than 20 percent of the population has an annual income below the poverty level, as determined by the most recently available census data; and

"(E) the term 'labor surplus area' means an area designated as such by the Secretary of Labor.".

(b) EFFECTIVE DATES.—The amendments made by paragraphs (4) and (5) of subsection (a) shall become effective on October 1, 1992.

SEC. 114. REGULATIONS.

Not later than 45 days after the date of enactment of this Act, the Small Business Administration shall promulgate interim final regulations to implement the amendments made by this subtitle.

SEC. 115. AUTHORIZATION OF APPROPRIATIONS.

(a) AUTHORIZATION OF APPROPRIATIONS.—Section 20 of the Small Business Act (15 U.S.C. 631 note) is amended by adding at the end the following new subsection:

"(k) AUTHORIZATION OF APPROPRIATIONS.—To carry out the program established under

section 7(m), there are authorized to be appropriated to the Small Business Administration—

"(1) for fiscal year 1992—

"(A) $45,000,000, to be used for the provision of loans; and

"(B) $10,000,000, to be used for the provision of grants;

"(2) for fiscal year 1993—

"(A) $80,000,000, to be used for the provision of loans; and

"(B) $25,000,000, to be used for the provision of grants; and

"(3) for fiscal year 1994—

"(A) $60,000,000, to be used for the provision of loans; and

"(B) $35,000,000, to be used for the provision of grants.".

(b) REPEAL OF EXISTING PROVISION.—Section 609 of Public Law 102-140 (105 Stat. 831) is amended by striking subsection (*l*).

TITLE II—AMENDMENTS TO THE SMALL BUSINESS ACT AND RELATED ACTS

Subtitle A—Small Business Competitiveness Demonstration Program

SEC. 201. EXTENSION OF DEMONSTRATION PROGRAMS.

(a) SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM.—Section 711(c) of the Small Business Competitiveness Demonstration Program Act of 1988 (15 U.S.C. 644 note, 102 Stat. 3889) is amended to read as follows:

"(c) PROGRAM TERM.—The Program shall commence on January 1, 1989, and terminate on September 30, 1996.".

(b) ALTERNATIVE PROGRAM FOR CLOTHING AND TEXTILES.—Section 721(c) of the Small Business Competitiveness Demonstration Program Act of 1988 (15 U.S.C. 644 note, 102 Stat. 3895) is amended by striking "September 30, 1992" and inserting "September 30, 1996".

(c) EXPANDING SMALL BUSINESS PARTICIPATION IN DREDGING.—Section 722(a) of the Small Business Competitiveness Demonstration Program Act of 1988 (15 U.S.C. 644 note) is amended—

(1) by striking "During fiscal years 1989, 1990, 1991, and 1992, the" and inserting "The"; and

(2) by inserting before the period at the end ", commencing on October 1, 1989 and terminating on September 30, 1996".

SEC. 202. MANAGEMENT IMPROVEMENTS TO THE SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM.

(a) IMPLEMENTATION ON A FISCAL YEAR BASIS.—Section 712(d) of the Small Business Competitiveness Demonstration Program Act of 1988 (15 U.S.C. 644 note, 102 Stat. 3890) is amended—

(1) in paragraph (1), by striking "4 quarters" in the third sentence and inserting "4 fiscal year quarters"; and

(2) in paragraph (3), by inserting "fiscal year" before "quarter".

(b) TARGETED APPLICATION OF REMEDIAL MEASURES.—Section 713(b) of the Small Business Competitiveness Demonstration Program Act of 1988 (15 U.S.C. 644 note, 102 Stat. 3892) is amended—

(1) in the first sentence, by striking "to the extent necessary for such agency to attain its goal" and inserting "only at those buying activities of the participating agency that failed to attain the small business participation goal required by section 712(a)";

(2) by striking the third sentence; and

(3) by inserting after the first sentence, the following new sentence: "Upon determining that its contract awards to small business concerns again meet the goals required by section 712(a), a participating agency shall promptly resume the use of unrestricted solicitations pursuant to subsection (a).".

(c) RELATIONSHIP TO RELATED LAW.—Section 713 of the Small Business Competitiveness Demonstration Program Act of 1988 (15 U.S.C. 644 note, 102 Stat. 3892), as amended by subsection (b), is further amended by adding at the end the following new subsection:

"(d) RELATIONSHIP TO OTHER APPLICABLE LAW.—Solicitations for the award of contracts for architectural and engineering services (including surveying and mapping) issued by a Military Department or a Defense agency shall comply with the requirements of subsections (a) and (b) of section 2855 of title 10, United States Code.".

(d) SUBCONTRACTING ACTIVITY.—Section 714 of the Small Business Competitiveness Demonstration Program Act of 1988 (15 U.S.C. 644 note, 102 Stat. 3892) is amended—

(1) by redesignating subsection (b) as subsection (c); and

(2) by inserting after subsection (a) the following new subsection:

"(b) SUBCONTRACTING ACTIVITY.—

"(1) SIMPLIFIED DATA COLLECTION SYSTEM.—The Administrator for Federal Procurement Policy shall develop and implement a simplified system to collect data on the participation of small business concerns (including small business concerns owned and controlled by socially and economically disadvantaged individuals) as other than prime contractors.

"(2) PARTICIPATING INDUSTRIES.—The system established under paragraph (1) shall be used to collect data regarding contracts for architectural and engineering services (including surveying and mapping). The Administrator for Federal Procurement Policy may expand such system to collect data regarding such other designated industry groups as deemed appropriate.

"(3) PARTICIPATING AGENCIES.—As part of the system established under paragraph (1) data shall be collected from—

"(A) the Environmental Protection Agency;

"(B) the National Aeronautics and Space Administration;

"(C) the United States Army Corps of Engineers (Civil Works); and

"(D) the Department of Energy.

The Administrator for Federal Procurement Policy may require the participation of additional departments or agencies from the list of participating agencies designated in section 718.

"(4) DETERMINING SMALL BUSINESS PARTICIPATION RATES.—The value of other than prime contract awards to small business concerns furnishing architectural and engineering services (including surveying and mapping) (or other services provided by small business concerns in other designated industry groups as may be designated for participation by the Administrator for Federal Procurement) shall be counted towards determining whether the small business participation goal required by section 712(a) has been attained.

"(5) DURATION.—The system described in subsection (a) shall be established not later than October 1, 1992 (or as soon as practicable thereafter on the first day of a subsequent quarter of fiscal year 1993), and shall terminate on September 30, 1996.".

(e) STATUS OF SMALL BUSINESS CONCERNS".—Section 714(c) of the Small Business Competitiveness Demonstration Program Act of 1988 (15 U.S.C. 644 note, 102 Stat. 3892) (as redesignated by subsection (d)) is amended—

(1) in the subsection heading, by inserting "AND STATUS" after "SIZE";

(2) by inserting "and the status of the small business concern (as a small business concern owned and controlled by socially and economically disadvantaged individuals)" after "size of the small business concern".

(f) REPORTS TO CONGRESS.—Section 716 of the Small Business Competitiveness Demonstration Program Act of 1988 (15 U.S.C. 644 note, 102 Stat. 3893) is amended—

(1) in the section heading, by striking "**REPORT**" and inserting "**REPORTS**";

(2) in the first sentence of subsection (a), by striking "fiscal year 1991 data is" and inserting "data for fiscal year 1991 and 1995 are"; and

(3) in subsection (c), by striking "report" and inserting "report to be submitted during calendar year 1996".

(g) IMPROVING ACCURACY OF DATA PERTAINING TO A-E SERVICES.—Section 717(d) of the Small Business Competitiveness Demonstration Program Act of 1988 (15 U.S.C. 644 note, 102 Stat. 3894) is amended by inserting before the period at the end the following: ", and such contract was awarded under the qualification-based selection procedures required by title IX of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 541 et seq.)".

(h) PROCUREMENT PROCEDURES.—Restricted competitions pursuant to section 713(b) of the Small Business Competitiveness Demonstration Program Act of 1988 (15 U.S.C. 644 note, 102 Stat. 3892) shall not be imposed with respect to the designated industry group of architectural and engineering services if the rate of small business participation exceeds 35 percent, until the improvements to the collection of data regarding prime contract awards (as required by subsection (g)) and the system for collecting data regarding other than prime contract awards (as required by subsection (d)) have been implemented, as determined by the Administrator for Federal Procurement Policy.

(i) TEST PLAN AND POLICY DIRECTION.—The Administrator for Federal Procurement Policy shall issue appropriate modifications to the test plan and policy direction issued pursuant to section 715 of the Small Business Competitiveness Demonstration Program Act of 1988, to conform to the amendments made by this section and section 201(a).

SEC. 203. AMENDMENTS TO THE DREDGING DEMONSTRATION PROGRAM.

(a) MODIFICATION OF THE SMALL BUSINESS PARTICIPATION GOALS.—The first sentence of section 722(b) of the Small Business Competitiveness Demonstration Program Act of 1988 (15 U.S.C. 644 note, 102 Stat. 3895) is amended—

(1) by striking "and" at the end of paragraph (3);

(2) by striking the period at the end of paragraph (4) and inserting "; and"; and

(3) by adding at the end the following new paragraph:

"(5) 20 percent during fiscal year 1993, and each subsequent year during the term of the program, including 5 percent of the dollar value of suitable contracts that shall be reserved for emerging small business concerns.".

(b) EXCLUSION OF CERTAIN CONTRACTS.—Section 722(b) of the Small Business Competitiveness Demonstration Program Act of 1988 (15 U.S.C. 644 note, 102 Stat. 3896) is further amended—

(1) by striking "total dollar value of contracts" and inserting "aggregate value of all suitable contracts"; and

(2) by striking the last sentence and inserting the following: "The total value of contracts to be performed exclusively through the use of so-called dustpan dredges or sea-

going hopper dredges is deemed to be generally unsuitable for performance by small business concerns and is to be excluded in calculating whether the rates of small business participation specified in subsection (b) have been attained.".

(c) QUALIFIED SMALL BUSINESS COMPETITORS.—Section 722(c) of the Small Business Competitiveness Demonstration Program Act of 1988 (15 U.S.C. 644 note, 102 Stat. 3896) is amended—

(1) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively; and

(2) by inserting after paragraph (1) the following new paragraph:

"(2) Prior to making a determination to restrict a solicitation for the performance of a dredging contract for exclusive competition among 2 or more eligible small business concerns in accordance with section 19.5 of the Government-wide Federal Procurement Regulation (48 C.F.R. 19.5, or any successor thereto), the contracting officer shall make a determination that each anticipated offeror is a responsible source (as defined under section 4(7) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(7)) and has (or can demonstrate the capability to obtain) the specialized dredging equipment deemed necessary to perform the work to be required in accordance with the schedule to be specified in the solicitation.".

(d) REPORTS.—Section 722(f) of the Small Business Competitiveness Demonstration Program Act of 1988 (15 U.S.C. 644 note, 102 Stat. 3896) is amended—

(1) in paragraph (1), by striking "September 30, 1992" and inserting "September 30, 1995"; and

(2) in paragraph (2), by striking "of the fiscal years 1989, 1990, and 1991" and inserting "fiscal year during the term of the program established under subsection (a)".

Subtitle B—Defense Economic Transition Assistance

SEC. 211. SECTION 7(a) LOAN PROGRAM.

Section 7(a) of the Small Business Act (15 U.S.C. 636(a)) is amended by adding at the end the following new paragraph:

"(21)(A) The Administration may make loans under the authority of this subsection—

"(i) to a small business concern that has been (or can reasonably be expected to be) detrimentally affected by—

"(I) the closure (or substantial reduction) of a Department of Defense installation; or

"(II) the termination (or substantial reduction) of a Department of Defense program on which such small business was a prime contractor or subcontractor (or supplier) at any tier; or

"(ii) to a qualified individual seeking to establish (or acquire) and operate a small business concern.

"(B) Recognizing that greater risk may be associated with a loan to a small business concern described in subparagraph (A)(i), any reasonable doubts concerning the firm's proposed business plan for transition to non-defense-related markets shall be resolved in favor of the loan applicant when making any determination regarding the sound value of the proposed loan in accordance with paragraph (6).

"(C) Loans pursuant to this paragraph shall be authorized in such amounts as provided in advance in appropriation Acts for the purposes of loans under this paragraph.

"(D) For purposes of this paragraph a qualified individual is—

"(i) a member of the Armed Forces of the United States, honorably discharged from active duty involuntarily or pursuant to a program providing bonuses or other inducements to encourage voluntary separation or early retirement;

"(ii) a civilian employee of the Department of Defense involuntarily separated from Federal service or retired pursuant to a program offering inducements to encourage early retirement; or

"(iii) an employee of a prime contractor, subcontractor, or supplier at any tier of a Department of Defense program whose employment is involuntarily terminated (or voluntarily terminated pursuant to a program offering inducements to encourage voluntary separation or early retirement) due to the termination (or substantial reduction) of a Department of Defense program.".

SEC. 212. SMALL BUSINESS DEVELOPMENT CENTER PROGRAM.

Section 21(c)(3) of the Small Business Act (15 U.S.C. 648(c)(3)) is amended—

(1) by striking subparagraph (D);

(2) by redesignating subparagraphs (E), (F), and (G) as subparagraphs (D), (E), and (F), respectively; and

(3) by inserting before subparagraph (H) the following new subparagraph:

"(G) assisting small businesses to develop and implement strategic business plans to timely and effectively respond to the planned closure (or reduction) of a Department of Defense facility within the community, or actual or projected reductions in such firms' business base due to the actual or projected termination (or reduction) of a Department of Defense program or a contract in support of such program—

"(i) by developing broad economic assessments of the adverse impacts of—

"(I) the closure (or reduction) of the Department of Defense facility on the small business concerns providing goods or services to such facility or to the military and civilian personnel currently stationed or working at such facility; and

"(II) the termination (or reduction) of a Department of Defense program (or contracts under such program) on the small business concerns participating in such program as a prime contractor, subcontractor or supplier at any tier;

"(ii) by developing, in conjunction with appropriate Federal, State, and local governmental entities and other private sector organizations, the parameters of a transition adjustment program adaptable to the needs of individual small business concerns;

"(iii) by conducting appropriate programs to inform the affected small business community regarding the anticipated adverse impacts identified under clause (i) and the economic adjustment assistance available to such firms; and

"(iv) by assisting small business concerns to develop and implement an individualized transition business plan.".

Subtitle C—Small Business Administration Management

SEC. 221. DISADVANTAGED SMALL BUSINESS STATUS DECISIONS.

(a) PUBLICATION OF DECISIONS.—A decision issued pursuant to section 7(j)(11)(F)(vii) of the Small Business Act (15 U.S.C. 636(j)(11)(F)(vii)) shall—

(1) be made available to the protestor, the protested party, the contracting officer (if not the protestor), and all other parties to the proceeding, and published in full text; and

(2) include findings of fact and conclusions of law, with specific reasons supporting such findings or conclusions, upon each material issue of fact and law of decisional significance regarding the disposition of the protest.

(b) PRECEDENTIAL VALUE OF PRIOR DECISIONS.—A decision issued under section 7(j)(11)(F)(vii) of the Small Business Act that is issued prior to the date of enactment of this Act shall not have value as precedent in deciding any subsequent protest until such time as the decision is published in full text.

SEC. 222. ESTABLISHMENT OF SIZE STANDARDS.

(a) IN GENERAL.—Section 3(a) of the Small Business Act (15 U.S.C. 632(a)) is amended by striking "In addition" and all that follows through the end period and by adding at the end the following new paragraphs:

"(2) In addition to the criteria specified in paragraph (1), the Administrator may specify detailed definitions or standards (by number of employees or dollar volume of business) by which a business concern is to be recognized as a small business concern for the purposes of this Act or any other Act. Unless specifically authorized by statute, the Secretary of a department or the head of a Federal agency may not prescribe for the use of such department or agency a size standard for categorizing a business concern as a small business concern, unless such proposed size standard—

"(A) is being proposed after an opportunity for public notice and comment;

"(B) provides for determining, over a period of not less than 3 years—

"(i) the size of a manufacturing concern on the basis of the number of its employees during that period; and

"(ii) the size of a concern providing services on basis of the average gross receipts of the concern during that period; and

"(C) is approved by the Administrator.

"(3) When establishing or approving any size standard pursuant to paragraph (2), the Administrator shall ensure that the size standard varies from industry to industry to the extent necessary to reflect the differing characteristics of the various industries and consider other factors deemed to be relevant by the Administrator.".

(b) REGULATIONS.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Administrator of the Small Business Administration shall issue proposed regulations to implement the amendments made by subsection (a). Final regulations shall be issued not later than 270 days after such date of enactment.

(2) LISTING OF ADDITIONAL SIZE STANDARDS.—The regulations required by paragraph (1) shall include a listing of all small business size standards prescribed by statute or by individual Federal departments and agencies, identifying the programs or purposes to which such size standards apply.

SEC. 223. MANAGEMENT OF SMALL BUSINESS DEVELOPMENT CENTER PROGRAM.

Not later than 45 days after the date of enactment of this Act, the Administrator of the Small Business Administration shall submit to the Committees on Small Business and the Committees on Appropriations of the Senate and the House of Representatives, proposed regulations for the Small Business Development Program authorized by section 21 of the Small Business Act (15 U.S.C. 648). Such proposed regulations shall not be published in the Federal Register.

Subtitle D—Technical Amendments

SEC. 231. COMMISSION ON MINORITY BUSINESS DEVELOPMENT.

(a) TERMINATION.—Section 505(f) of the Business Opportunity Development Reform Act of 1988 (15 U.S.C. 636 note; 102 Stat. 3887) is amended by inserting before the period at

the end "or September 30, 1992, whichever is later".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply as if it were included in the Business Opportunity Development Reform Act of 1988 (15 U.S.C. 636 note).

SEC. 232. TECHNICAL CORRECTIONS.

(a) AMENDMENTS TO SECTION 8.—Section 8 of the Small Business Act (15 U.S.C. 837) is amended—

(1) in subsection (a)(1)(B), by striking the period and inserting a semicolon;

(2) in subsection (a)(1)(C), by striking the period and inserting "; and";

(3) in subsection (a)(6)(C)(i), by striking "to (A)" and inserting "to subparagraph (A)";

(4) in subsection (a)(6)(C)(ii), by striking "7(j)(10)(H)" and inserting "7(j)(10)(G)";

(5) in subsection (a)(12)(E), by striking "to (D)" and inserting "to subparagraph (D)";

(6) by redesignating subsections (c) through (i) as subsections (d) through (j), respectively;

(7) by inserting after subsection (b) the following:

"(c) [Reserved].";

(8) in subsection (d)(4)(F)(ii) (as redesignated by paragraph (6) of this subsection), by striking "impositon" and inserting "imposition"; and

(9) in subsection (h)(2) (as redesignated by paragraph (6) of this subsection), by striking "Administration" and inserting "Administrative".

(b) AMENDMENTS TO SECTION 15.—Section 15 of the Small Business Act (15 U.S.C. 644) is amended—

(1) in subsection (c)(2)(B), by striking "Blindmade" and inserting "Blind-made";

(2) in paragraphs (3) and (5) of subsection (k), by striking the semicolon and inserting a comma;

(3) in subsection (l)(6), by adding a period at the end; and

(4) in subsection (m)(2)(B), by striking "requirement" and inserting "requirements".

TITLE III—STUDIES AND RESOLUTIONS

Subtitle A—Access to Surety Bonding

SEC. 301. SHORT TITLE.

This subtitle may be cited as the "Small Business Access to Surety Bonding Survey Act of 1992".

SEC. 302. SURVEY.

(a) IN GENERAL.—The Comptroller General shall conduct a comprehensive survey of business firms, including using a questionnaire described in subsection (b), to obtain data on the experiences of such firms, and especially the experiences of small business concerns, in obtaining surety bonds from corporate surety firms.

(b) CONTENT OF SURVEY QUESTIONNAIRE.—In addition to such other questions as the Comptroller General deems appropriate to ensure a comprehensive survey under subsection (a), the questionnaire used by the Comptroller General shall include questions to obtain information from a surveyed business on—

(1) the frequency with which the firm was requested to provide a corporate surety bond in fiscal year 1992;

(2) whether the frequency with which the firm was requested to provide a corporate surety bond increased or decreased in fiscal years 1990, 1991, and 1992 and the reason for any increase or decrease, if known;

(3) the frequency with which the firm provided a corporate surety bond in fiscal year 1992;

(4) whether the frequency with which the firm provided a corporate surety bond increased or decreased in fiscal years 1990, 1991, and 1992 and the reason for any increase or decrease, if known;

(5) the average size of corporate surety bonds provided by the firm in fiscal year 1992;

(6) whether the average size of the corporate surety bonds provided by the firm increased or decreased during fiscal years 1990, 1991, and 1992 and the reason for any increase or decrease, if known;

(7) the dollar amount of the largest corporate surety bond provided by the firm in fiscal year 1992;

(8) whether the dollar amount of the largest corporate surety bond provided by the firm increased or decreased in fiscal years 1990, 1991, and 1992 and the reason for any increase or decrease, if known;

(9) the dollar amount of work performed by the firm by type of construction owner, including the Federal Government, State and local governments, other public entities, and private entities, in each of fiscal years 1990, 1991, and 1992;

(10) the dollar amount of such work bonded by a corporate surety company for the firm by type of construction owner, including construction owners referred to in paragraph (9), for each of fiscal years 1990, 1991, and 1992;

(11) whether the firm purchased its corporate surety bonds through an insurance agent or directly from a surety company;

(12) the means used by the firm to identify its source for the purchase of corporate surety bonds;

(13) the average corporate surety bond premium (expressed as a percentage of contract amount) paid by the firm in fiscal year 1992;

(14) any increase or decrease in the average corporate surety bond premium (expressed as a percentage of the contract amount) paid by the firm in fiscal years 1990, 1991, and 1992 and the reason for any increase or decrease, if known;

(15) whether or not the underwriting requirements (including state of accounts receivable, financial procedures, need for personal indemnification, and requirements for collateral) changed in fiscal year 1990, 1991, or 1992;

(16) the nature of any changes in underwriting requirements experienced by the firm in fiscal years 1990, 1991, and 1992 and the reason for any such changes, if known;

(17) whether or not the source of surety bonds (a surety agent or company) provided reasons for such changes in underwriting requirements and whether these reasons were provided orally or in writing;

(18) whether or not the bonding capacity (total dollar amount and number of bonds) for the firm changed in fiscal year 1990, 1991, or 1992;

(19) whether or not the source of surety bonds (a surety agent or company) provided reasons for any changes in bonding capacity and whether these reasons were provided orally or in writing;

(20) the services provided and advice given by the firm's source of corporate surety bonds in fiscal years 1990, 1991, and 1992;

(21) whether or not the firm obtained a corporate surety bond with the assistance of a Federal program (such as the surety bond guarantee program of the Small Business Administration and the bonding assistance program of the Department of Transportation) or a State or local program in fiscal year 1990, 1991, or 1992;

(22) whether or not the firm used any alternative to corporate surety bonds (such as individual surety bonds, letters of credit, certificates of deposit, and government securities) in fiscal year 1990, 1991, or 1992;

(23) if the firm has not provided any corporate surety bonds in fiscal year 1990, 1991, or 1992, the reasons the firm has not done so;

(24) the number of times the firm has had an application for a corporate surety bond denied in fiscal years 1990, 1991, and 1992, and the reason for any such denial, if known;

(25) whether or not the proposed source for the corporate surety bond (a surety agent or company) provided the reasons for its denial of that application and whether that explanation was provided orally or in writing;

(26) the length of time the firm has been in business;

(27) the number of years of construction experience of the firm's officers (if a corporation), partners, or owner (if a sole proprietorship), and those responsible for managing the execution of the firm's construction operations, and how many years of such experience is in the type of construction that provides the majority of the firm's annual sales volume;

(28) the approximate annual sales volume of the firm in fiscal years 1990, 1991, and 1992;

(29) the net worth (total assets less total liabilities) of the firm at the close of the firm's most recent fiscal year;

(30) the working capital (current assets less current liabilities) of the firm at the close of the firm's most recent fiscal year;

(31) the average age of the firm's accounts receivable (the average number of days required to collect payments due);

(32) whether the firm made a profit in fiscal year 1990, 1991, or 1992;

(33) the form and frequency of such firm's financial statements (statements audited and certified by an independent certified public accountant, statements reviewed by such a certified public accountant, compilation financial statements, or other forms of financial statements), and whether such statements were furnished with applications for bonding, if requested; and

(34) the 4-digit standard industrial classification code in which the firm performs the majority of its work.

(c) FIRMS TO BE SURVEYED.—The Comptroller General shall develop a statistically valid sample of business firms from the most recent list of construction firms maintained by the Dun and Bradstreet Company (identified as the "DUN Market Identifier" file) for which data regarding sales is available.

SEC. 303. REPORT.

(a) IN GENERAL.—Not later than 18 months after the date of enactment of this Act, the Comptroller General, in consultation with the Small Business Administration, shall conduct an assessment of the data obtained in the survey conducted pursuant to section 302 and submit to the Committees on Small Business of the Senate and the House of Representatives a report on the results of such assessment.

(b) CONTENTS OF THE REPORT.—

(1) IN GENERAL.—The report required by subsection (a) shall contain—

(A) a summary of responses of business firms to the survey conducted pursuant to section 302; and

(B) a description of any trends found by the Comptroller General in such responses.

(2) INFORMATION ON SMALL BUSINESS CONCERNS.—In presenting summaries of responses and descriptions of trends pursuant to paragraph (1), the Comptroller General shall provide specific information on the responses and trends of small business concerns, small business concerns owned and controlled by women, and small business

concerns owned and controlled by socially and economically disadvantaged individuals.

SEC. 304. DEFINITIONS.

For purposes of this subtitle—

(1) the term "fiscal year" means the fiscal year of the business firm being surveyed;

(2) the term "small business concern" has the same meaning as in section 3 of the Small Business Act (15 U.S.C. 632);

(3) the term "small business concern owned and controlled by socially and economically disadvantaged individuals" has the same meaning as in section 8(d)(3)(C) of the Small Business Act (15 U.S.C. 637(d)(3)(C)) (as redesignated by section 232(a)(6) of this Act); and

(4) the term "small business concern owned and controlled by women" has the same meaning as in section 127(d) of the Small Business Administration Reauthorization and Amendment Act of 1988 (15 U.S.C. 637 note).

Subtitle B—Small Business Loan Secondary Market Study

SEC. 311. SECONDARY MARKET FOR LOANS TO SMALL BUSINESSES.

(a) STUDY.—The Secretary of the Treasury, the Director of the Congressional Budget Office, and the Chairman of the Securities and Exchange Commission, in consultation with the Administrator of the Small Business Administration, shall conduct a study of the potential benefits of, and legal, regulatory, and market-based barriers to, developing a secondary market for loans to small businesses. The study shall include consideration of—

(1) market perceptions and the reasons for the slow development of a secondary market for loans to small businesses;

(2) any means to standardize loan documents and underwriting for loans to small businesses relating to retail and office space;

(3) the probable effects of the development of a secondary market for loans to small businesses or financial institutions and intermediaries, borrowers, lenders, real estate markets, and the credit markets generally;

(4) legal and regulatory barriers that may be impeding the development of a secondary market for loans to small businesses; and

(5) the risks posed by investments in loans to small businesses.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary of the Treasury, the Director of the Congressional Budget Office, and the Chairman of the Securities and Exchange Commission shall transmit to the Congress a report on the results of the study under paragraph (1). The report shall include recommendations for legislation to facilitate the development of a secondary market for loans to small businesses.

Subtitle C—Contract Bundling Study

SEC. 321. CONTRACT BUNDLING STUDY.

(a) IN GENERAL.—The Administrator of the Small Business Administration, acting through the Associate Administrator for Procurement Assistance, shall conduct a study regarding the impact of the practice known as "contract bundling" on the participation of small business concerns in the Federal procurement process.

(b) PURPOSE.—In addition to such other matters as the Associate Administrator for Procurement Assistance deems appropriate to assure the conduct of a comprehensive study and the development of practical recommendations, the study required by subsection (a) shall—

(1) identify the benefits and adverse effects of contract bundling to the procuring agencies;

(2) identify the benefits and adverse effects of contract bundling on small business concerns;

(3) examine the adequacy of the policy direction to agency procurement officials regarding the bundling of contract requirements;

(4) examine the extent to which agencies have been combining their requirements for the procurement of goods and services (including construction) into solicitations requiring an offeror to be able to perform increasingly larger contracts covering multiple and diverse elements of performance;

(5) consider the appropriateness of the explanatory statements submitted by the procuring agencies pursuant to section 15(a) of the Small Business Act regarding bundling of contract requirements; and

(6) determine whether procurement center representatives, small business specialists, or other agency procurement officials can, under existing guidance and authority, have the necessary policy direction and effective authority to make an independent assessment regarding a proposed bundling of contract requirements.

(c) PARTICIPATION.—

(1) IN GENERAL.—In conducting the study described in subsection (b), the Associate Administrator for Procurement Assistance shall provide for participation by representatives of—

(A) the Office of the Chief Counsel for Advocacy;

(B) the Office of Federal Procurement Policy; and

(C) the 10 Federal departments or agencies having the greatest dollar value of procurement awards during fiscal year 1991.

(2) ADDITIONAL CONSULTATION.—In conducting the study, the Associate Administrator for Procurement Assistance shall consult with representatives of organizations representing small business government contractors and such other public and private entities as may be appropriate.

(d) SCHEDULE.—Not later than 90 days after the date of enactment of this Act, the Associate Administrator for Procurement Assistance shall publish in the Federal Register a plan for the study required by this section. The study shall be completed not later than March 31, 1993.

(e) REPORT.—Not later than May 15, 1993, the Administrator of the Small Business Administration shall submit a report to the Committees on Small Business of the Senate and the House of Representatives. The report shall contain the results of the study required by subsection (a), together with recommendations for legislative and regulatory changes to maintain small business participation in the Federal procurement process, as the Administrator deems appropriate.

(f) DEFINITION.—For purposes of this section, the term "contract bundling" or "bundling of contract requirements" refers to the practice of consolidating into a single large contract solicitation multiple procurement requirements that were previously solicited and awarded as separate smaller contracts, generally resulting in a contract opportunity unsuitable for award to a small business concern due to the diversity and size of the elements of performance specified and the aggregate dollar value of the anticipated award.

Subtitle D—Resolution Regarding Small Business Access to Capital

SEC. 331. SENSE OF THE CONGRESS.

(a) FINDINGS.—The Congress finds that—

(1) small business concerns remain a thriving and vital part of the economy, accounting for the majority of new jobs, new products, and new services created in the United States;

(2) adequate access to either debt or equity capital is a critical component of small business formation, expansion, and success;

(3) small business concerns, which represent higher degrees of risk in financial markets than do large businesses, are experiencing increased difficulties in obtaining credit;

(4) minority-owned business enterprises have found extraordinary difficulties in obtaining credit; and

(5) demand for credit under the loan guarantee program contained in section 7(a) of the Small Business Act is insufficient to meet current demands.

(b) SENSE OF THE CONGRESS.—It is the sense of the Congress that—

(1) financial institutions should expand their efforts to provide credit to small business concerns, with special emphasis on minority-owned small business concerns;

(2) legislation and regulations considered by the Congress should be carefully examined to ensure that small business concerns are not negatively impacted; and

(3) legislation and regulations that enhance the viability of small business concerns, including changes in tax and health care policy, should be given a priority for passage by the Congress.

Amend the title so as to read: "A bill to amend the Small Business Act and related Acts to provide loan assistance to small business concerns, to extend certain demonstration programs relating to small business participation in Federal procurement, to modify certain Small Business Administration programs, to assist small firms to adjust to reductions in Defense-related business, to improve the management of certain program activities of the Small Business Administration, to provide for the undertaking of certain studies, and for other purposes.".

FEDERAL EMPLOYEES PAY COMPARABILITY ACT AMENDMENTS

ROTH AMENDMENT NO. 2914

Mr. SIMPSON (for Mr. ROTH) proposed an amendment to the bill (H.R. 2850) to make technical and conforming changes in title 5, United States Code, and the Federal Employees Pay Comparability Act of 1990, and for other purposes, as follows:

On page 45, line 5, strike out "comparability payments." and insert in lieu thereof "comparability payments. No later than 30 days before an employee receives comparability payments under this subparagraph, the President or the President's designee shall submit a detailed report to the Congress justifying the reasons for the extension, including consideration of recruitment and retention rates and the expense of extending locality pay.".

On page 50, insert between lines 10 and 11 the following new subsection:

(d) SENSE OF THE CONGRESS RELATING TO LAW ENFORCEMENT OFFICER PROVISIONS.—It is the sense of the Congress that—

(1) the provisions of section 5541(3) of title 5, United States Code (as added by section 2(40)(c) of this Act)—

(A) are enacted only for the purposes of pay and not for the purposes of retirement;

(B) do not reflect any intent of the Congress to change retirement eligibility standards for law enforcement officers; and

(2) law enforcement officers in primary positions have different retirement eligibility standards than employees in supervisory or administrative positions because of the different requirements in their responsibilities.

BILINGUAL VOTING ACT

SIMPSON AMENDMENT NO. 2915

Mr. SIMPSON proposed an amendment to the bill H.R. 4312, supra; as follows:

At the end of the bill, add the following:

SEC. . FUNDING.

Section 203 of the Voting Rights Act of 1965 (42 U.S.C. 1973aa–1a) is amended—

(1) by redesignating subsection (e) as subsection (f); and

(2) by inserting after subsection (d) the following:

"(e)(1) The Attorney General may make grants to States and political subdivisions for the specified purpose of paying for the costs of compliance with this section.

"(2) The prohibitions of this section shall only apply to a State or political subdivision during any period for which the State or political subdivision receives such a grant for the full amount of such costs.

"(3) The Attorney General may make such grants only to such extent, or in such amounts, as are provided in advance in appropriations Acts, for the specified purpose described in paragraph (1).".—

NOTICES OF HEARINGS

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

Mr. NUNN. Mr. President, I would like to announce for the information of the Senate and the public that the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs, will hold hearing on "Corruption In Professional Boxing".

This hearing will take place on Tuesday, August 11 and Wednesday, August 12, 1992, at 9:30 a.m. each day, in room 216 of the Hart Senate Office Building. For further information, please contact Daniel F. Rinzel of the subcommittee's minority staff at 224–9157.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON FOREIGN RELATIONS

Mr. SIMON. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, August 6, at 9 a.m. to conduct a nomination hearing.

The PRESIDING OFFICER. Without objection, it is so ordered.

SELECT COMMITTEE ON INDIAN AFFAIRS

Mr. SIMON. Mr. President, I ask unanimous consent that the Select Committee on Indian Affairs be authorized to meet on August 6, 1992, beginning at 9:30 a.m., in 485 Russell Senate Office Building, to consider for report to the Senate S. 2833, the Crow Settlement Act; S. 2836, to promote economic development on Indian reservations by making loans to States to assist States in constructing roads on Indian reservations; and S. 3118, the Indian Business Opportunities Enhancement Act, to be followed immediately by a joint hearing with the House Committee on Interior and Insular Affairs on H.R. 5735 and S. 3125, to amend the Southern Arizona Water Rights Settlement Act of 1962.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON SURFACE TRANSPORTATION

Mr. SIMON. Mr. President, I ask unanimous consent that the Surface Transportation Subcommittee, of the Committee on Commerce, Science, and Transportation, be authorized to meet during the session of the Senate on August 6, 1992, at 9 a.m. on high speed ground transportation oversight.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS, AND FORESTS

Mr. SIMON. Mr. President, I ask unanimous consent that the Subcommittee on Public Lands, National Parks and Forests of the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate, on August 6, 1992, at 2 p.m. to receive testimony on S. 2890, to provide for the establishment of the civil rights in education: Brown versus Board of Education National Historic Site in the State of Kansas, and for other purposes; H.R. 2109, to direct the Secretary of the Interior to conduct a study of the feasibility of including Revere Beach, located in the city of Revere, MA, in the National Park System; S. 2244, to require the construction of a memorial on Federal land in the District of Columbia or its environs to honor members of the Armed Forces who served in World War II and to commemorate U.S. participation in that conflict; H.R. 3665, to establish the Little River Canyon National Preserve in the State of Alabama; Senate Joint Resolution 161, to authorize the Go for Broke National Veterans Association to establish a memorial to Japanese-American war veterans in the District of Columbia of its environs, and for other purposes; and S. 2549, to establish the Hudson River Artists National Historical Park in the State of New York, and for other purposes.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON SMALL BUSINESS

Mr. SIMON. Mr. President, I ask unanimous consent that the Small Business Committee be authorized to meet during the session of the Senate on Thursday, August 6, 1992, at 9:30 a.m. The committee will hold a full committee markup on H.R. 5191, the Small Business Equity Enhancement Act of 1992.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT

Mr. SIMON. Mr. President, I ask unanimous consent that the Subcommittee on Oversight of Government Management, Committee on Governmental Affairs, be authorized to meet during the session of the Senate on Thursday, August 6, at 9:30 a.m., to hold a hearing on oversight of the Defense Commissary Agency.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. SIMON. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, August 6, at 10 a.m. to hold a business meeting to consider and vote on pending business.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

ABINGTON, MA, SENIOR LEAGUE ALL STARS LITTLE LEAGUE

• Mr. KERRY. Mr. President, today I would like to recognize the Abington, MA, Senior League All Stars Little League team for its outstanding accomplishments during this past year. Following an exceptional season of victories, Abington has become 1992 Massachusetts State champions. The team will represent our State in a division 3 championship elimination game against Arlington, VT, after which the winner of that game will advance to the Eastern Regional Championship.

Managers David Lindquist and Joseph Bognanno have led the Abington team to success, and I congratulate them as well as the players: Randy Baxter, Brian Bognanno, Robert Cummings, John Fava, Joshua La Pointe, Patrick Lydon, Ryan Marini, Brian McCormick, Kevin McGrath, Keith Sacchetti, Mark Spadorcia, Mike Spencer, Andrew Tuttle, and Todd Yazbeck. These young men have shown a dedication to sportsmanship and a spirit of athletic competition and I wish them the very best of luck in the games to come.•

INTIMIDATION IN PITTSBURGH

• Mr. BROWN. Mr. President, both newspapers in Pittsburgh, PA, have been closed since May 17 by a bitter strike, which recently has resulted in violence. Last Friday, July 31, 1992, the Miami Herald printed an editorial commenting on these disturbing developments in Pittsburgh, and I commend it to my colleagues:

If a mob sacked a newspaper office in Buenos Aires or Bogota, supporters of press freedom would be quick to protest not only the violence but also the authorities' failure to prevent it.

Similar denunciations would ring out if anti-abortion militants used violence and intimidation to disrupt an abortion clinic in the United States. Even in states where abortion is widely condemned and thus subject to efforts to outlaw it, the law doesn't countenance illegal tactics against it.

A clinic's would-be patients, after all, are merely trying to exercise a constitutional right. When government fails to protect those who would exercise their rights—even when their cause is unpopular—the result is an anarchy in which nobody is safe.

How sad, then, that so many usually loyal defenders of civil liberties have been silent about the disburbing events in Pittsburgh. A bitter labor-management dispute there has halted publication at both daily newspapers since May 17.

There are two sides in that dispute, and plenty of pain and blame for both. The disconcerting twist in this story, however, is that now violence and intimidation clearly have triumphed by effectively preventing an American newspaper from exercising its First Amendment right to publish.

Worse, some of the Pittsburgh area's leading public officials have seemed to be winking at the violence and doing little to protect the newspaper, its subscribers, its distributors, its advertisers, and those of its employees who choose to report to work. This is early reminiscent of the disappointing performance of several New York politicians during the strike at The Daily News.

Granted, the history of labor relations, especially prior to 1950, contains many egregious examples of violence by unions and management. Nobody should want a return to that shameful era. Ideally, collective bargaining in good faith would resolve issues long before economic disputes turn into physical confrontations.

When this process fails, however, both sides have a right to expect a vigorous and even-handed enforcement of laws against violence and intimidation. In Pittsburgh, that doesn't seem to be the case thus far. Where's the protest against this injustice?•

NOTICE OF DETERMINATION BY THE SELECT COMMITTEE ON ETHICS UNDER RULE 35, PARAGRAPH 4, PERMITTING ACCEPTANCE OF A GIFT OF EDUCATIONAL TRAVEL FROM A FOREIGN ORGANIZATION

• Mr. SANFORD. Mr. President, it is required by paragraph 4 of rule 35 that I place in the CONGRESSIONAL RECORD notices of Senate employees who participate in programs, the principal objective of which is educational, sponsored by a foreign government or a foreign educational or charitable organization involving travel to a foreign country paid for by that foreign government or organization.

The Select Committee on Ethics received a request for a determination under rule 35 for David Cox, a member of the staff of Senator BOREN, to participate in a program in China, sponsored by the Chinese People's Institute of Foreign Affairs, from August 17–29, 1992.

The committee determined that participation by Mr. COX in this program, at the expense of the Chinese People's Institute of Foreign Affairs is in the interest of the Senate and the United States.

The Select Committee received a request for a determination under rule 35 for William M. Long, Jr., a member of the staff of Senator HEFLIN, to participate in a program in China, sponsored by the Chinese People's Institute of Foreign Affairs and the Far East Studies Institute, from August 15–September 1, 1992.

The committee determined that participation by Mr. Long in this program, at the expense of the Chinese People's Institute of Foreign Affairs is in the interest of the Senate and the United States.•

REMARKS BY TAYLOR BRANCH BEFORE THE FEDERATION OF STATE HUMANITIES COUNCILS

• Mr. WOFFORD. Mr. President, I recently had the great pleasure of introducing Taylor Branch at the annual Humanities on the Hill Breakfast, sponsored by the Federation of State Humanities Councils. As my colleagues know, Taylor Branch is a journalist and author who has written extensively on one of the great successes of our democracy—the civil rights movement.

In his book "Parting the Waters," Taylor Branch dramatically and perceptively described the great meeting of popular protest and public power that enabled us to achieve the two main goals of the civil rights movement—securing the right to vote for black Americans and striking down the walls of legal segregation. Mr. Branch's remarks before the State Humanities Councils remind each of us of what we have achieved, and of what we have yet to achieve.

Mr. President, I ask that these remarks appear in the RECORD.

The remarks follow:

"DEMOCRACY IN AN AGE OF DENIAL"

(Taylor Branch, Pulitzer Prize Winner)

I'm happy to be here with you this morning. You're good people assembled here in war council in bad times. My work is in history, and I call upon you partly as witnesses to a dilemma that I fear I will have when the second part of my history of the civil rights movement appears—whenever that is. I fear that few readers will believe that I began working on the book's opening scene three years before the Rodney King case. It is a 1962 police action in Los Angeles in which the LAPD raided a house of worship, beat and shot thirteen people, one of whom died, three of whom were shot in the testicles—all black men. Afterwards the victims were arrested and charged with riot, mayhem, and resisting arrest. All were criminally convicted. In effect it was what would have happened in the Rodney King case had there been no videotape. That happened in 1962. I treat the episode as a turning point in the life of Malcolm X and the life of black America. Yet one of the reasons that I spend so much time trying to recover the event is that it passed almost completely without notice in the world at large. That a trauma of that size could occur in a city like Los Angeles in 1962 without public notice is part of the history of this time. It's sobering in the sense that we see the recycling of this violence not just in 1965 in the Watts riot and again last week in the Rodney King riots, but also in 1962. It's hopeful in another sense, that in 1962 you could have even worse outrages and miscarriages of justice and not even have them noticed by the world at large. At least we've come some way from there.

The riot and the racial upheavals of the 1960s generally marked the beginning of the end of a democratic renewal that was the hopeful upsurge of the early civil rights movement. We here have to ask the difficult question, if these riots of 1992 follow the path of history and mark another inward turning in our time, where was the renewal that should have gone before? We've already started the withdrawal before we had the great expansion of hope. That is indeed a sobering thought.

Twenty-five years ago, I was a kid at Princeton, at graduate school, with a bare inclination that we had passed through a period of democratic renewal in the civil rights movement, which had forced a change in my life's interest against my will. My father is in the dry cleaning business—he brought me up to believe that all people who are interested in politics, and especially politicians, are those who cannot find honest work. The 1960s forced me to change that. In graduate school at the Woodrow Wilson School at Princeton, I wanted one chance to experience the civil rights movement before it faded away, and I persuaded my faculty review board, much against its will, to allow me to go down and work for John Lewis' voter education project in southwest Georgia. The faculty committee did not want me to go because they said non-institutional work was not policy relevant experience; they wanted me to work for the Congressional Budget Office or preferably the Bureau of the Budget, which was and is considered the Taj Mahal of crisis management—that's what we called it back then. My proposal was considered an existential lark—I wanted to go down by myself, register these voters. The professors finally agreed that if I would agree to write a five-page memorandum on the policy implications of my existential experience for monopsony in the local labor markets of the agrarian counties in southwest Georgia. Back then, all freedom issues were considered a subsidiary of economic development. So I stepped off the end of the known world in going by myself into those rural counties. This is a personal story to tell you how my fascination with democratic history began only after I became a very disoriented young man.

In the summer of 1969, on the day men first landed on the moon, I was in a tiny little county, Schley County, in Georgia. After one month's work, I had given up on men. I decided that if there was any hope for voter registration in southwest Georgia, it was with the women. And in this tiny county I'd been told there was an old, old matriarch, 90 years old, and that if she could find it in her heart to say a kind word about voter registration in this county, where there were no black registered voters, that something might happen. So I was on her porch on July 20 [1969], the day that the news had come that Neil Armstrong had set foot on the moon. And I was trying to get her interested in voter registration, to receive a grant to register voters. She was in a rocking chair

and had a lip full of snuff, and all of a sudden she said to me, "Young man, do you really think we landed on the moon this morning?"

And I said, "Yes," and she said, "How do you know?"

I said, "Well, I saw it on Walter Cronkite back at the motel before I came over here this morning."

She just rocked and she didn't say anything—and the next thing she said was, "Have you seen the Simonize wax commercial?"

And I said, "What Simonize wax commercial?"

She said, "The one where the little children float across the kitchen on an invisible shield of Simonize wax and don't scuff the floor."

Actually, I remembered that—it was a very vivid commercial. I said "Yes, I've seen that."

She said, "Well, do you believe that?"

I realized she had an agenda going here, and I said, "Well, yes, I believe that they can make it look like that, but that's a commerical—I saw the moon landing on the news program. That's different than a commercial."

She didn't say anything, she kept rocking. The next thing she said was, "Have you ever been in a fist fight?"

Every time she threw me off balance I found myself talking more and more in the language of policy. I said, "Unfortunately, I have, I don't see it as a very good way of settling disputes," and so on and so forth.

She said, "I mean the kind of fist fight where more than one tooth gets knocked out at a time."

I said, "No, I've never been in one like that," and she said, "Well, I've been in some, and I've seen plenty of them, and people don't get up and talk again the way they do on 'Have Gun Will Travel.'"

She kept rocking for awhile, and I kept talking more and more about policy, getting more and more nervous, and finally she said, "Young man, I can prove to you that we didn't land on the moon this morning."

I said, "How can you do that?" She said, "Well, God wouldn't allow it." Now being in the depth of a heathen period at that time, I said, "What does God have to do with whether we landed on the moon?"

She said, "You have not thought about it. If we could land on the moon this morning, all we have to do is fill up our tank once on the moon and on the next jump we could probably make it into heaven without God's permission, without dying. And you know that could never happen."

By that time, she really had me. I didn't know what to say, but a number of lessons were dawning on me. One of them was that she was not interested in voter registration in Schley County. I perceived that. Another was that she was telling me in her own way a very profound lesson about what is fear, what is real, who can teach what to whom. Here was a lady almost 90 years old who literally went back to the end of slavery, lived in a county with no black registered voters and where her whole life has taught her that questions of voting and race go to the very nerve of survival and identity and being. And all of a sudden, here on her porch one morning comes a young white man talking about economic development and voter registration, telling her, encouraging her to do something that she knows might mean life or death in that county. At her age she was not ready for it. She was asking me questions about what is real, what is hope, what is dangerous, what you can perceive, what is fear.

I also sensed something else—there was absolutely no way that I could capture the reality of that moment or that conversation, or a thousand other things that happened to me that summer, in the language of a policy memorandum for the faculty review committee back at Princeton. The language of policy does not reach the wisdom and experience of the common people in a democracy like ours. The old lady's presence made me feel this lesson in my bones long before I could articulate it, which is the point. I kept a diary that summer, as never before or since, just trying to record the experiences that I had traveling around. That became the basis of the first article I ever had published, which occurred before it dawned on me that writing might be something for me to pursue as a career.

The old lady taught me a good deal about narrative, about democratic experience and where movements come from. "Movement" is a trivial word today. But a social movement is a fundamental faith in strangers and an encounter with new possibilities, always involving discovery and a step in the unknown. A fresh sense of democratic social movements led to my strong, strong belief in narrative history, particularly in cross-cultural affairs. We make discoveries at the human level and not at the analytic level, although many people fool themselves into thinking that they can cross barriers between cultures by analysis. It's an insight as old as the Book of Genesis that the truth of even the most complex abstractions is best communicated in stories about brothers quarreling with sisters or fathers quarreling with sons. We need narrative history—I think we especially need it in a democracy. We lose sight oftentimes of just how terrifying, how bold democracy really is. Democracy in its best form is a stark, public encounter with the inner nature of the human condition. It is by definition a faith in strangers—faith that the greatest issues of the day can turn on the vote of the last wino to come to the polls. We have more faith in strangers embedded in our tradition and in our fundamental philosophy than most of us care to contemplate. But this democracy, this vision, this movement, this opening of the public space, is basically what will save us and what will renew us if we hope to have another democratic renewal of the public faith in strangers will renew our democracy. spirit in our time.

I like to think of what I've learned in studying movement history, civil rights history, cross-racial history, religious history in the last ten years, as a fundamental primer in democracy. The democratic faith in strangers requires a disciplined vision. It is a faith balanced by the discipline of self-control. We lose sight of the elementary fact that the heart of it is self-government, to govern ourselves without benefit of external authority. So a basic definition is that democracy is where the discipline of faith in strangers meets the discipline of self-control. This is a sobering thought for these times, when we by and large have very little of either. In the generation since I met the lady rocking on her porch, white Americans have basically evacuated all large cities in the United States. We have turned inward. It is an era of white power, of suburban power, of Jewish power, black power, turning inward to tribal constituencies, rather than reaching out towards strangers. We have turned inward, we have very little faith in one another, and obviously, we have very little self-control. All we have to do is look at the budget, at schools and cities, at the environment, at some of the issues that make people concerned about the health of democracy today.

This is not the era for triumphalism, for crowing that democracy stands victorious at the end of history because the competing system have fallen, particularly communism. There are other forms of government that are much older and better established not only in history but in most parts of the world than democracy—and those forms are tyranny, and chaos. Democracy will not survive unless people give it renewals of spirit. When Ben Franklin came out of the Constitutional Convention, he was asked, "What form of government have you conceived?" He said, "A new one, a democracy, if you can keep it." It was considered a bold and risky venture to conceive of a government without some external authority treating citizens like children and telling them what to do.

The under side of modern progress is that we have lost many of the natural forms of discipline that once governed humankind. Famine, war, weather, crop failure, competition—many of these things checked our excesses through tragedy and hardship. We've triumphed over some of them, but we need to substitute a new source of discipline. The democratic belief is that it must come from within, sustained by our faith in one another and our belief in fundamental practices of citizenship. American history teaches us that whenever the meaning of our democratic intuition is tested, when it is expanded, when leaders perform like geniuses and people perform like citizens, the focus almost always has been over the race issue. The race issue tells us how democratic we are becoming, in the age of the abolitionists as well as the age of Martin Luther King. Unfortunately, in the past generation, race has driven presidential politics in this inward turning period. The unspoken, prevailing message has been that government is evil because government exists to help poor people, which mainly means black people, and therefore we want to avoid it altogether. That subliminal message in a sophisticated form has driven our presidential politics to the degree that we have made government the enemy in a country dedicated to the notion that the government is us. How can we live with this kind of contradiction? It faces the Congress, it faces the humanities councils, so that we see democracy nowadays in these riots and in the budget questions, we see it drift, lost from its fundamental principles.

I see this to some degree in my own research in the secrecy issue. Some of the most ridiculous classifications and secrets going back to the 1930s and 1940s are still maintained today. The real Berlin Wall crumbled, which is a great miracle, but the paper Berlin Wall that separates our government from our people still stands proud. If you don't believe me, go down to the FBI reading room, which has no windows and where you can't go to the bathroom without an escort, and see some of the documents that still remain classified three, four, five decades later.

Another area where there is very little thinking about the fundamentals of democracy is the telltale realm of private vices. We are all over the place on the conflict between democracy's desire to protect people, to protect their freedoms, against its equivalent, competing goal of protecting people from harm by others. Cigarettes are terrible; they kill 350,000 people a year. We say that it should be against the law for children to smoke, but we sell cigarettes in vending machines. We say that drugs are a terrible

thing, such that even a government premised on the notion that people can govern themselves also operates on the premise that those same people can't resist self-evidently self-destructive devices without police to tell them to do so. Vices are monarchical in the response that they call out of people. At the same time, we have state governments promoting lotteries, telling people that vice is not only something that they don't need to avoid, but that it is their civic duty to participate. The ethos of the lottery advertisement is very similar, almost identical, to the ethos of your street corner drug dealer, which is "forget reality, forget your obligation to society, forget your children and take a chance you might hit and get high." Evocations in those ads of what people should do and ought to do if they hit the lottery are so antisocial that it mocks reality that they exist in a democracy. The fantasies portrayed have to do with buying castles or your own personal moon rocket, escaping into material bliss, getting away from the futility of work and the wretchedness of your fellow creatures. Nothing that Donald Trump has ever thought of doing would embarrass the role models in lottery ads, who make robber barons look like models of civic virtue.

To recapture and renew the basics of democracy requires clear thought, faith, discipline, and to some degree an enlargement of the public space. As the world shrinks we have to face the fact that we Americans are rich, we have to speak plain, like the lady in the rocking chair, we have to understand that we can't all be middle class, that by world standards anybody who makes $10,000 or $15,000 is rich. We have a country that is paralyzed because we have a large number of people who are too puffed up to realize that the great challenge in the modern world is what sacrifices we are willing to make for our future, for our progeny, for our public space. Marginal private consumption of people even at the basic middle class level is not as important as whether we pass on the democratic experiment alive and well in spirit. To do so requires enormous discipline and connection with strangers.

In the period I'm writing about now, one of the most moving displays of such disciplined faith occurred in the final moments of Mickey Schwerner. I've spoken with several of the FBI agents who took the confessions of the Klansmen who killed Schwerner and two other civil rights workers in June '64. The agents were struck by something—that all the Klansmen remembered the same haunting words from their victim. When he was dragged out into the Mississippi night, knowing that he was about to be lynched, facing people full of hate, Schwerner's last words before he was shot were "Sir, I know just how you feel." The discipline of the movement was that even when confronting death itself and your worst enemies, you never broke hope of establishing human contact with your fellow citizens. Such incandescent faith cannot last long. Within two years of that remark by Schwerner, which was fully in keeping with the preaching and the discipline of the freedom riders, people who had built a movement by reaching out for common ground with their enemies were instead chopping off ground even among their own allies, saying "you're not militant enough for me," or "you're only a liberal, I'm a radical," and they started turning inward. People can't afford to do that. It is rejecting the discipline and the hope of the democratic spirit.

Looking back after ten years' research, I have a number of odd thoughts on the historic challenge of renewing the democratic experience. I'll mention just two. Number one, the last time the United States had a balanced budget was in 1968, the year of the Tet offensive, the Martin Luther King riots, the Robert Kennedy assassination, the King assassination, the peak year of the Vietnam war, and the only major year of the war on poverty. The President who introduced that budget and who got it through was Lyndon Johnson, the father of the Great Society. If we have accepted the political paradox that only a bedrock conservative can have the political capital to open the door to communist China, perhaps we need to begin to entertain the notion that only a social liberal who aches for the poor can have the discipline to regain our sense of budgetary discipline in our country. How many trillions of debt must we heap on our children before that possibility occurs?

The second odd thought has to do with women, like the old woman in the rocking chair. If the periods of renewal, of movement spirit, of expansion in the public consciousness occur most often in American history around the race issue, it also seems true that those movements have been built upon the sensibilities of women in alliance with the maverick clergy. When you're looking for people to go to jail, when you're looking for plaintiffs, they are more likely to be women. And when you need a public spokesman, that public spokesman is going to speak the language of Isaiah, the language of Amos and of the other justice prophets of Hebrew scripture. That's true of the age of Theodore Parker, and true in the age of Martin Luther King, who quoted Parker: "The arc of the moral universe is long, but it bends toward justice." That message, and the purity of the notion that democratic intuition is married to something that's very close to the heart both of our religious impulses and of our highest civic duty, seems to come through the sensibilities and the manpower, if you will, of women. From this perspective, it is a tragedy that the abortion issue in the last 25 years has to some degree divided women from the clergy. We need either more women clergy or more of the prophetic clergy in consultation with women, to restore a coalition that has wrested illumination and hope from eras far more gloomy than our own.

Finally, for your humanities councils and in the spirit of democratic renewal, I would like to recommend something that I have grown with in conviction ever since I met the woman in the rocking chair, which is the value of oral history. My interview with her was an oral history. I would not have found her lessons in a library. Cultures tend to preserve what they are comfortable with. Fifty years from now, if someone wants to write about the impact of Asian American immigration in the United States in the '80s and '90s, they probably will not find the documents to bring it alive in libraries. Oral history is important not just for the raw materials of living history but as an antidote to television and other forces in our modern age that shear us off from one another, generation from generation, grandparents from grandchildren, black from white, Asian from European, all these divides that are so crucial and so paralytic to democratic change and to understanding our history. I believe that oral history is a rectifying force not just in overcoming the great tragedy of vanished, unrecoverable history—if you go to Alabama today and ask for the oral histories of the bus boycott in Montgomery or the Selma march, they will look at you like you're nuts—but as teaching tool for the people, like myself, who go and do those oral histories. In your state humanities councils, I encourage you to explore the notion of having teenagers and little school children in American history courses do oral histories with their own grandparents or other relatives, to rekindle, to rediscover the human sinews of family, these differences within the generations. They may move on to do an oral history of a grandparent of somebody else's family, particularly from a different culture. Then you've got the beginnings of what a movement is—a discovery that the world is larger than its material boundaries, and that they themselves can make it larger. That sense of stepping into the unknown is the beginning of faith in strangers, and I hope that it will renew the democratic spirit as has constantly occurred when people really apply themselves to that central intuition of our American history.

If democracy is all that's left, we must try it. And never, never take it for granted.•

M–1A1 UPGRADES

• Mr. D'AMATO. Mr. President, I am deeply suspicious of a report in the trade press concerning M–1A1 upgrades. If accurate, we have come full circle in the struggle to preserve the tank industrial base.

Two years ago, when new tank production was slated for cancellation and upgrade proposals first began to surface, the tank building community found itself very much at cross purposes. Aware that the M–1A2, then in development, promised the greatest profit per tank, the prime contractor promoted a plan for upgrading M–1A1's to the M–1A2 configuration. This plan neatly eliminated the backbone of the tank industrial base from participation in the modification program, and pooled benefits in the hands of the prime and a few electronics manufacturers producing black boxes more commonly found in aircraft cockpits.

The rest of the tank industrial base, centered around the depots and arsenals, developed an M–1 to M–1A1 upgrade that had the virtue of addressing some of the known deficiencies of early M–1's, such as an inadequate main gun and insufficient armor protection, at considerably less cost than the M–1A1's to M–1A2 plan. In the eyes of many, it was a debate over gold-plating versus modernizing the force.

After a wrangle of rare intensity, advocates of maintaining the tank industrial base compromised. The M–1 was accepted as the starting point for any upgrade program; however, on the question of the end point, the authorizers and appropriators agreed to disagree. The authorizers supported an M–1 to M–1A2 modification plan. The appropriators, noting the rapidly declining Army procurement budget and the high price and uncertain benefits of the M–1A2, chose the significantly less costly M–1 to M–1A1 option.

The Department of Defense, taking advantage of the confusion, refused to spend the money.

In the interim, U.S. forces were sent to the Persian Gulf. It was not lost on congressional observers that the Army traded M–1 tanks for M–1A1's prior to the initiation of Desert Storm, and that Iraq's Soviet-built tanks were decisively outmatched by the M–1A1 in every important category. This, combined with the dissolution of the Soviet Union, eased pressure to pace what was revealed to be wildly exaggerated estimates of the capability of Soviet armor and the rate of its armor modernization program.

Desert Storm aside, the prime contractor, still seeking maximum profit, stepped up its efforts to ram a M–1A2 upgrade through Congress last year. The Army, of mixed mind on tanks, allowed the contractor to formulate policy on Capitol Hill. By year's end, to avoid Pentagon exploitation of congressional disagreement, M–1A1 champions bowed to those favoring M–1A2 to form a united front.

The cost of the M–1A2, by now exorbitant as compared to the Army's allocation of procurement dollars, provided a convenient excuse for the Pentagon to again refuse to spend the money.

This year, faced between the choice of upgrading tanks or funding the rest of the weapons and tracked combat vehicles account, the Army understandably chose not to pursue a tank upgrade program. A rescission was offered, but only partially accepted. The Pentagon was directed to spend $225 million in prior year appropriations to initiate a tank upgrade program.

Now I read that the Army had developed a two-part plan to convert M–1A1's to M–1A2's through 1995 and then upgrade M–1's to M–1A2's from 1996 to 2000. This is nothing more than a price bailout that fattens the prime contractor while allowing the core elements of the industrial base that has produced tanks in this country for most of this century to wither away. Why do we need to upgrade the M–1A1 when, in 100 hours of brutally one-sided combat, it proved its overwhelming superiority? Even if you accept the need to improve the M–1A1, does it make sense to upgrade your best tanks first and your worst tanks last? By structuring the upgrade this way, I have to believe that this is just an Army ploy to lull the tank industrial base into not objecting. Sometime in the future, when funds magically dry up for the M–1 to M–1A2 upgrade, it will be too late for the industrial base to respond. Meanwhile, thousands of older M–1's, most destined for National Guard units, will remain unable to match even the current threat, arguably, this is a subtle way of keeping Guard combat arms units out of any future frays.

Let me put the Army leadership on notice here and now: I will do everything I can to prevent this plan from ever seeing the light of day. See you in Appropriations.●

COMMENDING THE FUTURES OF AMERICA

● Mr. BOND. Mr. President, I rise today to urge my colleagues in the U.S. Senate to join me in paying tribute to a remarkable organization that has devoted years of service to 172 Veterans' Administration hospitals across the country. I am speaking of the Futures of America.

The Futures of America exemplified quality of voluntarism and dedication to our veterans and has made a difference in the lives of others. They have performed 12 free concerts for over 2,000 patients and have traveled over 5,000 miles to spread love and happiness to the veterans who fought for our freedom and democracy. As Governor of Missouri, I had the opportunity to hear their patriotic music in my office and was impressed with their spirit and enthusiasm.

These loyal members have not only devoted their time to our veterans, but have financed 60 percent of the expenses. Even though these young members have families, careers, and school, they still find time in their hearts to uplift our veterans' spirits with the sounds of peace and happiness. It is important that we remember to help those less fortunate than ourselves. The Futures of America have benefited literally thousands of veterans and, therefore, are deserving of special recognition. They are a true inspiration to others.

Mr. President, I would like to extend my sincere congratulations to the Futures of America for their service and commitment to our veterans. We salute those whose enthusiasm and deeds bring good to others in ever increasing measure. When we give of ourselves, we experience the renewing power of life.●

CENTURION ATTACK SUBMARINE AUGUST 6, 1992

● Mr. D'AMATO. Mr. President, the July 1992 issue of "Proceedings" includes two letters on *Centurion* in the "Comment and Discussion" section from Lt. Bart Vinskey and Harold Hemond. I believe Lieutenant Vinskey and Mr. Hemond have correctly divined the essential elements of the *Centurion*.

I ask that the text of both letters be printed in the RECORD immediately after my remarks.

The letters follow:

"CENTURION: THE CHANGING FUTURE OF THE FORCE"

Lieutenant Bart A. Vinskey, Supply Corps., U.S. Navy.—Commander Peppe brings up many valid points, but his belief in the submarine as a "do-all" platform is invalid. That is what killed the *Seawolf*. The Navy made it a large, do-everything submarine and eventually priced it out of existence. Face it, if the *Seawolf* and its BSY–2 combat system were not so complicated, they would not be so expensive—and would be under construction and in production.

The Navy needs to return to basics and build capable—and affordable—weapon systems. What the submarine force needs is a boat to go in harm's way: a small submarine with four torpedo tubes, space for 24 weapons (cruise missiles and torpedoes), a 30-knot top speed, and relatively simple communications, electronic-support-measures, and sonar equipment.

The submarine service doesn't need to invent new roles or cross over to other communities' roles. Ten years ago, after the Argentine Navy cruiser *General Belgrano* was sunk by a British submarine, the rest of the Argentine Navy stayed in port—while British amphibious forces re-took the Falkland Islands. That's the role for us—sinking enemy submarines and surface ships—and that's what we should be building submarines to do.

Harold C. Hemond.—Commander Peppe wrote very convincingly of the characteristics that must be incorporated into the next generation of nuclear-powered attack submarine, the *Centurion*.

However, except by implication, he overlooked probably the most important characteristic. If the *Centurion* is to avoid the fate of the *Seawolf*, it must be drastically less expensive. If the *Centurion* is half the price of the *Seawolf*, it may get favorable attention in the Congress. To ensure congressional support, the goal should be more like one-third the cost of the *Seawolf*.

The Navy and its suppliers are not accustomed to cost as a dominant characteristic in weapons procurement, but this is part of the changing future of the force. The *Centurion* must be everything Commander Peppe catalogues, but it must be affordable—or it will never exist.●

HELENE C. MONBERG RECEIVES INTERIOR PUBLIC SERVICE AWARD

● Mr. BROWN. Mr. President, Helene C. Monberg, a distinguished journalist and humanitarian who proudly points to her roots in Leadville, CO, recently received the U.S. Department of the Interior's Public Service Award from Interior Secretary Manuel Lujan, Jr.

Helene came to the Nation's Capital many years ago as one of the first women to be a Washington correspondent for United Press International. Since then, she was the Washington reporter for a number of Colorado newspapers, including the Pueblo Star Chieftain, the Leadville Herald Democrat and the Grand Junction Daily Sentinel. During the past several years, Helene has focused on issues vital to Colorado and other Western States, producing a weekly newsletter, Western Resources Wrap-up.

Despite a hectic journalism career, Helene has devoted herself toward improving the lives of the less fortunate. Her Achievement Scholarship program [ASP] has provided scholarships to more than 300 ex-offenders in the Washington area since she founded the program in 1973. A graduate of the University of Colorado, Helene plans to endow the university with scholarship funds for disadvantaged students who otherwise will never have a college education. Helene has been cited as Washingtonian of the Year by Washing-

tonian Magazine and Big Sister of the Year by the Big Sister Program.

Whether she is digging for a story or trying to help someone, Helene always approaches life with tenacity and boundless enthusiasm. In presenting Helene with the Interior Department's Public Service Award, Secretary Lujan noted her outstanding journalistic and humanitarian achievements. I join my colleagues in congratulating Helene on another recognition of her accomplishments and in wishing her continued success in her efforts to help others.

The text of the Memorandum of Nomination from Secretary Lujan follows:

MEMORANDUM OF NOMINATION, HELENE C. MONBERG, PUBLIC SERVICE AWARD, DEPARTMENT OF THE INTERIOR

As a veteran news reporter, Helene Monberg has made as great a contribution to natural resources work as many people directly involved in the field. Her weekly Western Resources Wrapup has presented inside information on Congressional activities, programs and actions of numerous agencies in resources fields, and headsup details on developing issues. Her newsletter has covered a great variety of topics in natural resources and has illustrated her indepth of subjects including water, forestry, mining, energy, public lands, and the environment. Her understanding of the interrelationship of Congress and the Executive Branch, coupled with her knowledge of natural resources as a native of the West, has given Ms. Monberg unparalleled ability to present issues in a way that clearly promotes public understanding and awareness of vital natural resources issues. The Western Resources Wrapup newsletter has contributed greatly to furthered understanding of Reclamation issues, in addition to other important natural resources topics and, therefore, has provided strong and continuing indirect assistance and support to the accomplishment of the agency's mission.

In addition to her outstanding professional career, Ms. Monberg has devoted a great deal of her personal time to volunteer service. She founded the Achievement Scholarship Program in 1973 to give ex-offenders a second chance to be successful and to discourage repeat offenses. Through private funding, the program has provided seed-money scholarships to individuals, primarily young black males on parole or probation in the Washington, D.C. area. Ms. Monberg's work has had a positive influence on the lives of 300 awardees who have maintained a completion rate consistently higher than the general population in colleges, trade schools, or special schools. On March 21, 1990, before the House of Representatives, the Honorable Dan Schaefer of Colorado presented a tribute to the Achievement Scholarship Program and stated that "a new milestone has been reached by a successful citizen program designed to slow down the revolving door for the ex-offender." In 1989, Ms. Monberg became semi-retired and turned the program over to the ARCH Training Center in Washington, D.C., to ensure that her efforts will continue into the future.●

THE SUPERCONDUCTING SUPER COLLIDER

● Mr. KERREY. Mr. President, on Monday the Senate considered an amendment to the Energy and Water appropriations bill regarding the superconducting super collider. I opposed the Bumpers amendment striking all funding for the superconducting super collider. I would like to discuss briefly my reasons for opposing the Bumpers amendment.

Last year, I voted with Senator BUMPERS on this issue principally because I feared cost overruns would produce a project cost beyond what I considered reasonable. However, since that vote the contractors have done an exceptional job of reducing the risk of massive increases in the cost of the project.

This is not the only change since last year. We have also witnessed significant changes in the world, particularly the collapse of communism. This change makes it clear it is time for the United States to shift its emphasis to priorities which have been underfunded throughout the 1980's.

One important priority that needs attention is the basic research in particle physics. This research forms the basis for many of our leading edge technologies. The application of these technologies—if we meet the challenge with improved training of our work force—will mean higher standards of living for the American people.

These technologies will affect how we organize our work places, how we manufacture products, and how we communicate and trade with others. Yet while the Japanese and Germans spent the last decade focusing on these technologies and investing in the industries that will profit from them, our economic resources have been spent elsewhere. As a result, the United States now spends less than 10 percent of GNP on plant and equipment, while Germans spend about 17 percent the Japanese 20 percent.

A large part of the problem is that we have been focusing our R&D dollars on military projects while our competitors have targeted theirs on civilian projects. We invented a rail system for MX missiles; they invented one for high-speed commuter trains. We perfected stealth technology that made bombers invisible to radar; they perfected microchip technology that made computer circuits invisible to the human eye.

The cold war is over and our technology must come home. The super collider, once completed, will be the world's largest scientific research facility. It will secure the United States' position at the forefront of particle physics. Particle physics and the capacity to develop a final answer for unified theory, is an extremely important piece of basic research that needs to be done if the United States is going to maintain its lead in a number of critical technologies that will develop new industries and employ thousands of Americans.

As in many other debates, deficit reduction is an important issue, but so are the priorities we use to assess our funding allocations. The super collider's fiscal year 1993 request is only 2 percent of the total civilian research budget and less than 1 percent of the Nation's total research and development budget. Programs such as the super collider are not threatening the economic future of America. In fact, it is important that we invest in programs such as these. The growth in health care entitlement programs is driving up the deficit and making it impossible for us to invest properly. This is the area to which we must look to reduce our enormous budget deficit.●

CONCLUSION OF MORNING BUSINESS

Mr. SIMPSON. Mr. President, I ask unanimous consent that the period for morning business be concluded.

The PRESIDING OFFICER. Without objection, it is so ordered.

VOTING RIGHTS LANGUAGE ASSISTANCE ACT

The PRESIDING OFFICER. The clerk will state the bill.

The assistant legislative clerk read as follows:

A bill (H.R. 4312) to amend the Voting Rights Act of 1965 with respect to bilingual election requirements, the Senate continued with the consideration of the bill.

YEAS AND NAYS

Mr. SIMPSON. Mr. President, may I at this point—due to the early hour of voting in the morning—it might be appropriate to ask for the yeas and nays on the two amendments while our three good colleagues are here.

So I ask for the yeas and nays on the two amendments.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

AMENDMENT NO. 2915

(Purpose: To require Federal funding)

Mr. SIMPSON. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Wyoming [Mr. SIMPSON] proposes an amendment numbered 2915.

Mr. SIMPSON. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the bill, add the following:

SEC. . FUNDING.

Section 203 of the Voting Rights Act of 1965 (42 U.S.C. 1973aa-1a) is amended—

(1) by redesignating subsection (e) as subsection (f); and

(2) by inserting after subsection (d) the following:

"(e)(1) The Attorney General may make grants to States and political subdivisions for the specified purpose of paying for the costs of compliance with this section.

"(2) The prohibitions of this section shall only apply to a State or political subdivision during any period for which the State or political subdivision receives such a grant for the full amount of such costs.

"(3) The Attorney General may make such grants only to such extent, or in such amounts, as are provided in advance in appropriations Acts, for the specified purpose described in paragraph (1).".

Mr. SIMPSON. Mr. President, this amendment simply provides that the Federal Government will pay for the federally mandated bilingual ballots and other bilingual voter assistance.

Not one of us visits our districts, those in the House or here in the Senate, without understanding very clearly that the States, counties, and local governments are struggling under fiscal restraints as serious, and in some cases even more serious—if that is possible—than the Federal Government.

This amendment is consistent with my position expressed recently at a refugee hearing that if the Federal Government decides in its wisdom to do things like admitting 130,000 refugees to the United States this year, it has a vivid responsibility to also provide the funding to reimburse the State and local governments for the costs of resettling these federally admitted refugees.

It is truly irresponsible to pass laws requiring State and local jurisdictions to carry out Federal programs, and then pass the buck to the State and local governments—perhaps I should say pass "spending the buck" to the State and local governments, and passing the unfunded Federal mandates to the State and local governments which have had to cut program after program is not right and not fair.

If Congress believes that requiring bilingual ballots is a good thing to do—I am sure they will, regardless of the evidence presented about the effectiveness for 17 years—or that it is the right thing to do—I can assure you that will be the case, at least in the value of political correctness—at least we should have the conviction to find the money to pay for it.

So I urge my colleagues to support the amendment. I might treat some of my colleagues with the amendment debate in the House. There was argument that this was a constitutional right. Therefore, this was really not a Federal mandate, but simply a law supporting and enforcing this constitutional right. I say to you that there is no constitutional right to have a ballot printed in a particular voter's language. Every citizen is given the right and the opportunity to vote.

As we explained earlier, there are many ways for voting-age citizens who are illiterate in English to exercise their precious right to vote without the Federal Government mandating bilingual ballots. If we are going to do it, then we ought to pay for it.

Mr. President, I ask unanimous consent to have printed in the RECORD an article from the Sacramento Bee of February 26, 1992, talking about the extra cost in that jurisdiction, and that cash-strapped Sacramento County would jump $50,000 for each collection with regard to this measure.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Sacramento Bee, Feb. 26, 1992]

$50,000 COST SEEN FOR SPANISH BALLOT

(By Ken Chavez)

The cost of democracy in cash-strapped Sacramento County could jump $50,000 for each election if a new bill designed to help voters with poor English skills is approved by Congress.

Unveiled by a group of Hispanic congressmen Tuesday as the Voting Rights Improvement Act of 1992, the proposed law would make Sacramento one of 10 California counties requiring Spanish-language ballots.

Ernest Hawkins, Sacramento's chief vote counter, said county officials who are already facing severe budget shortfalls would be forced to spend as much as $50,000 on extra printing costs to provide bilingual ballots for each election.

Currently, county election material is mailed to voters in English only. A Spanish-language translation is provided upon request, Hawkins said, adding that fewer than 100 of the county's 551,028 voters have asked for materials in Spanish.

If the law is approved, Hawkins said his staff would likely "go back and assess the need and find some way of not providing bilingual material, but providing it upon request or providing an enhanced version of what we're doing now."

Hawkins, who leaves for Washington today for a conference on proposed election law changes, said Sacramento groups like the local chapter of the Mexican-American Political Association have been more interested in having voter education material—not ballots—printed in Spanish.

Members of the group have also helped out with Spanish-speaking voters at polling booths, Hawkins said, "We've been working with these groups and we've come up with something everybody is happy with."

But backers of the proposals want to ensure that better provisions are made for voters who have trouble reading or speaking English.

Under federal voting-rights laws expiring in August, bilingual assistance must be provided in any county where 5 percent of the bilingual voters are poor English speakers.

The new bill would keep the 5 percent threshold intact, but also establish an alternative measure for reaching bilingual voters—one that requires any county with at least 10,000 voters who have limited proficiency in English to provide bilingual assistance. The bill's provisions would be extended to the year 2007.

"Non-English speaking voters need to be guaranteed the same assistance and explanatory material as English-speaking voters," said Rep. Esteban Torres, D-Los Angeles, a sponsor of the bill.

Mr. SIMPSON. Remember, this is a county that said, we have always mailed our material to the voters in English only. "A Spanish-speaking translation is provided upon request," said the clerk, adding that "fewer than 100 of the county's 551,028 voters have asked for materials in Spanish."

I know it makes everybody feel good, but it does not do a thing to increase voter participation.

Mr. SIMON. Mr. President, I hope this will be turned down decisively by this body, as it—this was not turned down in the committee, because it did not come up in the committee.

But this same amendment was decisively turned down on the motor-voter bill by this body.

The other problem, very practical problem, is that it holds up implementation of the bill. We want to move ahead on this thing. We are going to have to wait for appropriations and other things to move ahead. And we have been working with local jurisdictions, and the local jurisdiction that has the greatest impact is Los Angeles; and there, the total cost of this will be less than $200,000 for a very, very major jurisdiction.

In San Francisco, where roughly 21 percent of the population speaks Chinese, and 12 percent Spanish, there, the costs in terms of election costs is less than—in terms of total budget is four one-thousandths of 1 percent. There simply is not any necessity for this. If the Federal Government had a huge surplus and did not know what to do with it, and did not have a lot of good causes, then I think it makes sense. This is not something that is being demanded by local jurisdictions, because the costs are so minor. Again, I point out this sample ballot we have from San Francisco, adding this Spanish and Chinese on this ballot is a relatively simple thing. It is not a costly thing.

While I have this chance, Mr. President, I also want to thank my colleagues, and I thank Senator MITCHELL, the majority leader. I want to thank Senator KENNEDY, Senator BIDEN, Senator HATCH, who has been very helpful; Senator SIMPSON, who is an opponent on this matter, but one I have great respect for. And specifically, also, the members of our staff, John Trasvina and Jayne Jerkins of my staff. Dick Day, and Cordia Strom of Senator SIMPSON'S staff, Jeff Blattner from Senator KENNEDY'S staff; Mark Disler from Senator HATCH'S staff, and Cynthia Hogan of Senator BIDEN'S staff.

One of these products does not happen without a great deal of work from a great many people, and I am grateful to all of them. But again, Mr. President, I do not think I need to go into great detail. This is something that clearly ought to be rejected.

Mr. President, I yield 5 minutes to the Senator from Massachusetts.

Mr. KENNEDY. Mr. President, as the Senator from Illinois pointed out, on

May 19 this year, the Senate tabled, by a vote of 54–41, an amendment to the motor-voter bill that would have delayed the implementation of that legislation until 1 year after the Federal Government appropriated funds to pay for the changes in the voter registration required by that law. The Senate properly rejected that amendment and should reject this one as well.

I was just listening to my friend and colleague from Wyoming. This legislation has been in effect for 17 years. I have read the RECORD in the House of Representatives today and listened to the debate this evening. We do not have one single elected official who has written to the committee to complain about the cost of the law. That happens to be the fact.

It was never raised by those who offered a similar amendment over in the House of Representatives, and it has not been introduced into our RECORD by the minority, and it has not been referred to this evening. It is not a problem. Every local community would like additional funding. But as far as being a heavy burden on the communities, it just is not so.

Under the Constitution, a State has a solemn responsibility to provide a Republican form of government and to assure all persons of the equal protection of the law. The bilingual assistance provisions of the Voting Rights Act are necessary to assure all citizens have a meaningful opportunity to participate in the electoral process. To satisfy their constitutional responsibilities, States should bear the cost of providing bilingual assistance to voters who need it.

Requiring the Federal Government to bear the costs of assuring that States satisfy their constitutional responsibilities would set a terrible precedent. The Federal Government does not, and should not, bear the costs when a State must undertake reapportionment to comply with the Voting Rights Act or the Constitution. The Federal Government does not, and should not, bear the cost when a State must remove barriers to access to voting places for persons with disabilities to comply with the Voting Rights Act or the Constitution. It does not, and should not, bear the cost of assuring that voters get the bilingual assistance they need to vote.

So, Mr. President, I hope that our colleagues will oppose this amendment.

I yield the remainder of my time.

Mr. SIMPSON. Mr. President, let me say that this is not a killer amendment. I think, if you believe in something, as the proponents do here, you should have the courage to fund it. And the way they can do it is to have a motion to waive the Budget Act, and that must pass with 60 votes.

But I say to my friend from Illinois that indeed that is the case. It does not give the local jurisdictions any comfort for us to say to the local governments that we cannot provide Federal funding because it would slow down this bill.

It is not going to help them at all, and it is the kind of thing that leaves them limp.

This amendment, I can assure you, was not soundly rejected by the House. It failed in the House by a single vote, and I think that is the fear here. The amendment was defeated by two votes in the House of Representatives. The vote on the amendment in the House was 184 to 186. The amendment was offered there by Representative CONDIT, a Democrat from California, where his district really knows the fiscal reality of this bill.

Bad enough that it simply be extended for 15 years on a 17-year tour of duty that it has already had. But now, in these times—and I inserted in the RECORD the indication of what it was going to cost in a single county.

These are realities, and I think that these realities will be evident here tomorrow when we vote on this particular amendment.

How much time do I have remaining?

The PRESIDING OFFICER. The Senator has 4½ minutes remaining.

Mr. SIMPSON. I reserve the remainder of my time for the moment.

Mr. SIMON addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. SIMON. Mr. President, I think the point made by Senator KENNEDY on the Americans With Disabilities Act, and the attempt that we have had to encourage local jurisdictions to make polling places accessible to people with disabilities, we have to come up with funds for that. This is contrary to what we have done.

Local jurisdictions vote for President and Vice President of the United States. They have to print that on the ballot. There is a cost there. If we are going to be consistent with this amendment, we ought to provide some funding for local governments when they have to pay for voting, putting that Presidential name and Vice Presidential name on the ballot.

We have separation of responsibilities, and local governments take care of voting costs. And this is a very, very minor cost in terms of those totals. So my hope is that this will be rejected, as the motor-voter suggestion along the same line, was rejected by the Senate.

Mr. President, I am willing to yield back the remainder of my time if the Senator from Wyoming is.

Mr. SIMPSON. Mr. President, I am sure the Senator from Massachusetts is going to leave the Chamber before I close up the remainder of my time. I see that he is.

So I, reluctantly, waiting always for the final opportunity with him, reluctantly relinquish the remainder of my time.

Mr. SIMON. Mr. President, I yield back the remainder of my time.

Mr. DECONCINI. Mr. President, I want to express my strong support for the legislation before us today.

The reauthorization of the language assistance provisions of the Voting Rights Act is crucial to the empowerment of many Americans who are not English proficient.

The Voting Rights Act has been effective in providing voting assistance to thousands of citizens. This bill would further enable, as well as encourage, many segments of the population to exercise their rights to vote.

This bill ensures equal access to the electoral process by providing bilingual registration and voting assistance for Americans who are not proficient in English.

It benefits many Americans who are unable to fully exercise their rights as U.S. citizens due to an inability to fully understand a ballot or voter registration card.

Without the means to give voters the opportunity to make an independent and informed vote, government is hindered in its representative function.

Section 203 of the Voting Rights Act, which authorizes the language assistance provisions, has been in use for 17 years and is doing its job by providing language assistance to citizens in 68 counties across the United States.

More minorities are being elected, and voter registration among minorities is increasing. In Arizona, where Hispanics constitute nearly 20 percent of the population, the number of Hispanics and Native Americans registered to vote has more than doubled since 1976.

I would like to address the significant changes this bill makes to the coverage of native Americans.

Current law fails to adequately identify Native Americans needing language assistance because it does not take into account their unique history and demographics. Without an alternative standard for native Americans, the language assistance provision of section 203 will not serve those Congress intended to protect and will contravene the Federal policy of language protection established by the Native American Languages Act of 1990.

The language assistance provisions work. From 1972 to 1990, the number of precincts with predominately Navajo voters in Coconino County, AZ, quadrupled, while the numbers of registered Navajo voters increased by 164 percent and Navajo voter turnout increased by 120 percent.

In Apache County, AZ, the number of precincts with predominately Navajo voters tripled between 1972 and 1990. The number of registered Navajo voters in those precincts increased by 80 percent and the Navajo voter turnout increased by 88 percent.

Some express concern about the possible costs of expanding coverage for native Americans. I do not believe this

bill will unduly burden counties for a number of reasons. First, counties can target assistance to those who need it, rather than providing it to all citizens.

Second, the cost of oral assistance is minimal. Oral assistance is all that sec. 203 requires because native languages are traditionally unwritten.

Third, covered jurisdictions themselves determine what constitutes compliance with section 203, subject to review by the Department of Justice. Good faith efforts to comply usually suffice.

And finally, the bill only covers those reservations where 5 percent of the voting age Indian population require assistance because they are not proficient in English.

Although some may argue that the provision is overbroad, I strongly disagree. Native American languages should be preserved and native Americans should participate in our electorial system of government. It is just this type of language assistance that can satisfy both these goals.

Until every member of the Hispanic, Asian and American and native American communities can take advantage of their right to vote, they will not be able to fully address the needs of housing, economic development, employment, and education which are vital to their continued success as American citizens.

The passage of this legislation will directly result in greater participation by Hispanic and native American voters in county, State, and national elections.

In this election year, it is only fitting that we demonstrate this country's commitment to protecting the constitutional rights of all citizens by passing this legislation. Without it, many Hispanic and native Americans would be deprived of the most precious of these rights, the right to vote.

I would like to commend Senators SIMON and HATCH for their hard work in moving this bill forward. This is a bill of utmost importance to Hispanics, native Americans and Asian-Americans.

I urge my colleagues to support this bill and reject any amendments that dilute its effectiveness.

Mr. MCCAIN. Mr. President, I am pleased to support and be an original cosponsor of S. 2236, the Voting Rights Act Language Assistance Amendments of 1992. Section 203 of the Voting Rights Act is set to expire on August 7, 1992. I am extremely pleased that the Senate is acting on this issue at this time.

Mr. President, section 203, along with two other permanent language assistance provisions, was added to the Voting Rights Act in 1975 to address the exclusion of limited English proficient voting age, qualified American citizens from the electoral process. Section 203 was based on congressional findings that language minority American citizens had been systematically denied access to the voting franchise.

Mr. President, the voting franchise is one of the single greatest tools any American has to voice his or her opinion. I believe that the Congress has a duty to ensure that the sacred right to express one's opinion by voting is preserved, whether that individual is fluent in English or not.

Opponents of this legislation have stated that the need for bilingual ballots has not been established. This is simply not true. Many hard working Americans would be disenfranchised if bilingual ballots were not available, and that is not right. Many taxpaying Americans of Hispanic, Asian, and native American descent utilize bilingual ballots.

Arizona voting rates prove that bilingual ballots do in fact increase voter turnout. From 1972 to 1990, the number of precincts with predominantly Navajo voters in Coconino County, AZ, quadrupled, while the numbers of registered Navajo voters increased by a staggering 164 percent, and Navajo voter turnout increased a noticeable 120 percent. During the same time, in Apache County, AZ, the number of precincts with predominantly Navajo voters tripled. The number of registered Navajo voters in those precincts increased by 89 percent and the Navajo voter turnout increased by 88 percent. The Justice Department has testified that it is convinced that section 203 has had a significant effect among Native Americans.

Second, section 203 allows for flexibility. It is important to note that the regulations governing this issue place the responsibility for determining what constitutes compliance with section 203 on the covered counties. The Federal Government, correctly, I believe, does not seek to strictly dictate what local government can do much better.

Third, I have heard from some in Arizona who oppose the extension of section 203 on the ground that counties will be forced to produce ballots in countless languages—most notably Native American languages—at a huge cost to the counties.

Mr. President, this is simply not true. For Native American languages the bill only requires oral assistance. No written ballots or other written electoral material need to be provided because most Native American languages generally have no commonly used written form. Further, the General Accounting Office determined in 1986 that the cost of oral assistance is minimal.

Fourth, I have heard from many that we should pursue teaching non-English speaking Americans the English language instead of extending the bilingual ballot program. I support efforts to teach English to all non-English speaking individuals. However, I do not believe that the teaching of English should be done at the sacrifice of people's historic culture or their constitutional right to vote.

Fifth, I believe that bilingual ballots will serve as a unifying, not balkanizing force. For example, if S. 2236 were to pass, Los Angeles County would be covered for six written languages. The Los Angeles County Registrar and organizations representing Hispanic and Asian Americans have agreed to a program that establishes how the country would comply with section 203. This agreement shows a notable amount of cooperation and unification between local government officials and language minority communities.

Lastly, Mr. President, I refer back to my first reason for supporting this bill. The right to vote is fundamental, and should not ever be denied any qualified American voter. It is contrary to the principles of representative government to deny any American the right to vote simply due to a language barrier.

Mr. President, Susan Anthony, in 1873, spoke eloquently on the subject of the integral and important link between voting and representative government:

> Here, in the first paragraph of the Declaration [of Independence], is the assertion of the natural right of all to the ballot; for how can the "consent to be governed" be given, if the right to vote be denied?

Mr. President, I strongly urge my colleagues to support S. 2236 and oppose any weakening amendments. I yield the floor.

Mr. DODD. Mr. President, I rise in support of the Voting Rights Language Assistance Amendments of 1992. This legislation will reauthorize and further strengthen section 203 of the Voting Rights Act, to ensure that language-minority voters can effectively exercise their right to vote.

At the outset, I would like to commend the chairman of the Subcommittee on the Constitution, Senator SIMON, and the distinguished Senator from Utah [Senator HATCH] on their bipartisan effort to bring this legislation to the floor.

This measure reauthorizes provisions that were first enacted in response to widespread discrimination against language-minority citizens. That discrimination took the form of unequal educational opportunities and exclusionary voting procedures such as literacy tests.

Recognizing those problems, Congress enacted measures to ensure that voters needing language assistance would not be denied their right to vote. Section 203 of the Voting Rights Act prohibits any State, county, or parish with significant numbers of limited English-proficient voters and a high-illiteracy rate from conducting English-only elections. The law also requires that covered jurisdictions provide reg-

istration and voting materials and ballots in the language of the applicable minority.

These measures have been very successful. They have helped to remove barriers to participation in the electoral process encountered by Hispanic Americans, Asian Americans and American Indians.

For example, in Texas, where the entire State is subject to Spanish language-assistance requirements, Hispanic registration rates jumped 125 percent from 1976 to 1988. In Arizona, in countries where there are large numbers of Navajo voters, voter registration has increased as much as 164 percent and voter turnout by 120 percent.

In my home State of Connecticut, the provisions of section 203 have helped numerous Hispanic voters in Hartford, Bridgeport, and Fairfield County exercise their right to vote.

Despite the effectiveness of the language assistance requirements, there is still much work to be done. The lasting effects of discriminatory practices and the increasing number of bilingual citizens indicate that we need to continue such measures. For example, the U.S. Commission on Civil Rights recently reported that one of the most significant factors limiting Asian-American political participation is the widespread unavailability of Asian language ballots and other election materials.

Furthermore, the current law only applies to certain jurisdictions, and there are many other jurisdictions where voters need assistance. This measure will expand the coverage of the bilingual voting provisions and further increase the number of citizens who register and vote.

Mr. President, our Nation has made great strides in the ongoing battle against discrimination. Unfortunately, there are still many forces which threaten to divide the citizens of this country. But we cannot afford to be divided. There are too many important issues facing this Nation—poverty, crime, and health care to name a few. These vital problems require that all our citizens work together to find solutions.

By expanding the democratic process, this legislation will help us find common solutions. This measure will ensure that language-minority citizens have equal access to the ballot box. With that access, these citizens can add their voices to, and secure the benefits of, our political system. Mr. President, I urge my colleagues to support this vital measure.

Mr. AKAKA. Mr. President, I rise today to join my colleague from Illinois, Senator SIMON, as a cosponsor of S. 2236. This bill, with 29 cosponsors, would extend provisions of the Voting Rights Act to ensure language assistance to citizens who would otherwise be prevented from voting by their limited proficiency in English.

S. 2236 would extend the expiration date of section 203 of the act through the year 2007. It would also extend coverage to jurisdictions with over 10,000 language minority citizens of voting age. This change will provide bilingual voting assistance to Americans of limited English proficiency who presently are not covered under the current 5-percent standard.

During markup of S. 2236, the Judiciary Committee adopted the 10,000-citizen benchmark. The committee concurred that the 5-percent standard failed to fulfill the goal of the Voting Rights Act. According to the committee report, which used 1990 census data, "a 20,000-citizen benchmark would fail to provide over 355,000 minority language citizens the language assistance they need for a meaningful exercise of the franchise."

Furthermore, the report states that the addition of a 10,000-citizen benchmark will make the right to vote a reality for over 860,000 language-minority citizens in the United States in 34 counties.

Although the Justice Department suggested using a 20,000 benchmark, the committee rejected that figure. Moreover, Mr. President, the 20,000 benchmark would also exclude every Asian group that would be covered under the 10,000 benchmark, with the exception of Chinese-Americans in Los Angeles.

In Hawaii, the higher benchmark would deny assistance to citizens of Japanese- and Filipino-speaking communities. In fact, Japanese, Filipino, and Vietnamese communities would not be covered anywhere in the United States under a benchmark of 20,000. Spanish-speaking citizens would also be excluded in some ares that would be covered under the 10,000 standard.

The purpose of adopting a numerical standard is to better promote the goal of section 203: To provide language assistance to large concentrations of language-minority voters who currently are unable to exercise their right to vote because of their limited proficiency in English.

Any barrier which prevents American citizens from exercising their right to vote must be eliminated. The bilingual amendments to the Voting Rights Act have assisted thousands of minority Americans to become enfranchised, and I wholeheartedly support extending the language-minority provisions. This bill enjoys bipartisan support in the Senate and has been passed by the House. In this, a Presidential election year, we should make every effort to assist our citizens to exercise their constitutional right to vote.

Raising the benchmark from 10,000 to 20,000 would significantly limit the effectiveness of this measure, and for this reason, I strongly support the Judiciary Committee's 10,000 benchmark and urge my colleagues to retain this figure.

Mr. INOUYE. Mr. President, I rise today in strong support of H.R. 4312, the Voting Rights Improvement Act of 1992. This bill reauthorizes one bilingual provision of the Voting Rights Act of 1965, section 203, and amends that section to better identify native Americans, Hispanics, and Asian-Americans whose limited English proficiency presents a barrier to meaningful participation in the electoral process. Section 203 expires by its own terms today. Accordingly, it is critical that the Senate take favorable action today. I am a proud cosponsor of the Senate companion measure and I urge my colleagues to vote in favor of H.R. 4312 and oppose any weakening amendments.

As chairman of the Select Committee on Indian Affairs, I would like to share with my colleagues my understanding of how this legislative initiative will greatly benefit descendants of the first Americans—American Indians, Alaska Natives, and native Hawaiians. Their languages were spoken on this continent for thousands of years before the English language ever arrived to these shores. Native American words have been incorporated into our political speech, such as the word "caucus." Native American political concepts, such as freedom of speech and the separation of powers, have become cornerstones of our democratic government. Nevertheless, native Americans remain under represented in local, State, and Federal Government.

Mr. President, many native Americans, particularly elders, cannot read the English language. They live on relatively isolated reservations with high rates of poverty and unemployment. Without language assistance these citizens cannot exercise their fundamental voting rights. They cannot take part in representative government. In the absence of our action, they will remain locked out of our political process.

Where language assistance has been provided under section 203 of the Voting Rights Act of 1965, native American registration and participation rates have skyrocketed. For example, on the Navajo Nation in Coconino County, AR, the number of registered Navajos increased by 164 percent and Navajo voter turnout increased by 120 percent between 1972 and 1990, in precincts where Navajo voters constitute the majority. Mr. President, I have not cited an isolated example—section 203 has clearly helped many native Americans gain access to the political process.

H.R. 4312 has special significance for native Americans because it improves section 203 coverage for those living on Indian reservations who have limited English skills. The current standard in section 203 inadvertently includes many reservations with significant populations of limited English-proficient native Americans. Elsewhere, only parts of reservations are covered. This occurs because the current cov-

erage standard does not consider the unique history and demography of native Americans. Native Americans living on reservations and other Indian lands comprise less than one-third of 1 percent of the total population of the United States. These relatively small populations are split by State and county lines, which were often drawn without regard for reservation boundaries when States entered the Union. As a result, most limited English-proficient native Americans do not exceed 5 percent of a county's voting age population.

H.R. 4312 provides an alternative coverage standard for native Americans which better identifies those needing language assistance: Where more than 5 percent of the native American voting age population of a reservation requires language assistance, the counties on that reservation will be covered pursuant to section 203. This alternative standard is necessary in order for section 203 to have real meaning for native Americans. Without it, only 4 of the more than 500 Indian tribal governments in the United States would receive assistance under section 203 alone.

The Tohono O'odham Nation of Arizona provides a good example of why an alternative standard is needed. They are the fifth largest tribe in the United States. Their reservation spans three counties in southern Arizona. According to the Census Bureau, several thousand voting age Tohono O'odham Indians cannot speak English well enough to participate in the electoral process. Nevertheless, none of the three counties on the Tohono O'odham reservation provide language assistance under the current section 203 standard. The reason for this is that most Tohono O'odham Indians live in the same county as the large, off-reservation city of Tucson, AZ, which has more than half a million residents. Even thought the Tohono O'odham speakers number in the thousands, they do not exceed 5 percent of the county's total voting age population. Under H.R. 4312, the Tohono O'odham Nation would receive language assistance under section 203, according to preliminary Census Bureau estimates.

Inevitably, some newly covered counties will have few native Americans who need assistance, simply because the incidence of native Americans in the population overall is low in comparison to other language-minority groups covered pursuant to section 203. I do not believe this will burden covered counties because only oral assistance is required for native American languages—no written ballots are needed. Indeed, the minimal cost of oral assistance was confirmed in a 1986 GAO report. Also, the Department of Justice regulations which implement section 203 permit counties to target assistance to those who need it. Counties need not provide language assistance in precincts where no native American language speakers vote.

Mr. President, limited English proficiency skills have not prevented our Government from asking native Americans to defend our county. Indeed, native Americans have served our Nation in the Armed Forces of the United States in numbers far exceeding their representation in the population. In Operation Desert Storm, for instance, Indian participation was seven times the national average—the largest percentage of any ethnic or racial group in the United States. So many Indians volunteered to fight in World War I—a time when Indians were not even allowed to be citizens of the United States—that the Congress was shamed into granting Indians national citizenship in 1924.

Mr. President, the Congress and President recently joined to proclaim 1992 the Year of the American Indian in recognition of the many outstanding and too often unacknowledged contributions native Americans have made to American history, culture, government, art, and language. Without reauthorization of section 203 of the Voting Rights Act, however, many native Americans with limited English proficiency will remain disenfranchised—they will remain unable to cast informed votes and make their voices heard at the polls.

Mr. President, I urge my colleagues to vote in favor of H.R. 4312 to ensure that every citizen of this Nation will be able to exercise their fundamental voting rights.

Mr. CRANSTON. Mr. President, the right to vote is the most fundamental and important right of citizens of a democracy. It is through the electoral process in a democracy that the people express their will. Democratic institutions cannot function effectively without an accurate understanding of that will.

We have all heard the statistics about the declining rate of voter participation in this Nation. Barely 50 percent of the eligible voting age population voted in the last Presidential election in 1988. Barely one-third of the eligible voter participated in the 1986 congressional election.

Yet what we often forget is that there are still thousands of American citizens who want to exercise their right to vote, but cannot because of their limited proficiency of the English language. In many counties across the country, being a language-minority citizen means you don't vote—even if you want to—because there is no bilingual assistance at the polls. Language-minority citizens in Los Angeles County in California, for example, receive no bilingual assistance even though there are hundreds of thousands of Asian Americans and Hispanic Americans residing there.

Unless we act to remove this barrier to voter participation, we run the risk of destroying the legitimacy of our democratic institution. For this reason, I wholeheartedly support the measure now before us, the Voting Rights Act language assistance amendments of 1992, S. 2236, and urge my colleagues to join me in supporting this bill.

This legislation would reauthorize section 203 of the Voting Rights Act of 1965 for 15 years and would amend the section's coverage formula to better identify language-minority communities in need of assistance. The bill would require that counties provide bilingual voting assistance if 5 percent or more than 10,000 of its voting age citizens are members of a single language minority and cannot speak or understand English well enough to participate in the electoral process.

The addition of the numerical benchmark of 10,000 is crucial in correcting the enormous loophole that currently exists in section 203. With this benchmark, several thousand language-minority citizens in Los Angeles County, Orange County, San Diego County, as well as several other counties that include cities like New York, Boston, and Philadelphia, would be assisted at the voting booth.

Some opponents of the legislation argue that the cost is too prohibitive. However, the use of bilingual ballots in the 1990 election in San Francisco only consisted of 5 percent of total election costs—or thirty eight ten-thousandths of 1 percent of the total city and county budget.

The important changes required by this bill will result in an increased opportunity for citizens to vote on election day.

Today we have the chance to reinvigorate our democracy by opening it more fully to citizen participation. Let us make the most of this opportunity.

Mr. BINGAMAN. Mr. President, I rise today to express my support for H.R. 4312, the Voting Rights Language Assistance Act. I urge my colleagues to join me and the bill's authors, Senators SIMON, HATCH, and KENNEDY, in swiftly approving this legislation, which will ensure millions of Americans continued access to the most basic of all American rights: the right to vote.

I am fortunate, Mr. President, to represent the State of New Mexico, a State rich in cultural and ethnic diversity. I am particularly proud that our state has, since its inception, recognized and protected the right of each and every citizen to vote. Since becoming a state, New Mexico has required, by constitutional provision, that all constitutional amendments be printed on ballots in English and Spanish. In fact, by tradition and statute, New Mexico has always printed its entire ballot in English and Spanish and has provided oral and written assistance, in

any language, to any voter who requests it.

Mr. President, every state should practice the traditions of New Mexico. As a Nation, we should feel a strong obligation to ensure that the unique needs of our diverse population are met, and we should work to preserve and promote the heritage of all our citizens. The legislation before us today will help us meet part of that obligation.

In New Mexico, from San Juan, Rio Arriba, and Colfax counties in the north; to Cibola and Grant Counties in the west; Quay and San Miguel counties in the east; and Hidago, Luna, Dona Ana, and Eddy Counties in the south, 26 of our 32 counties fall within the bill's provisions. Thousands of New Mexicans of Hispanic, Navajo, Pueblo, and Apache descent will benefit from this legislation. Across the Nation, this bill will provide American Indians, Hispanics, Asian American, and Alaska Natives with critically needed language assistance so that they can play a role in the electoral process. We should approve this legislation without delay and affirm the right to vote for all Americans.

ORDERS FOR TOMORROW

Mr. MITCHELL. Mr. President, I ask unanimous consent that when the Senate reconvenes tomorrow at 9 a.m., that immediately following the prayer, the Journal of the proceedings be deemed approved to date; that the time for the two leaders be reserved for their use later in the day, and that the Senate vote on or in relation to the Simpson 5-year extension amendment, to be followed immediately without any intervening action or debate by a vote on or in relation to the Simpson Federal funding cost to local jurisdictions amendment; that if the remaining amendments on a previous list governing consideration of this bill are offered, they be limited to 10 minutes each, equally divided in the usual form; and that no motions to recommit be in order.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECESS UNTIL 9 A.M. TOMORROW

Mr. SIMON. Mr. President, on behalf of the majority leader, I ask unanimous consent that the Senate stand in recess until 9 a.m., Friday, August 7.

There being no objection, the Senate, at 10:41 p.m., recessed until Friday, August 7, 1992, at 9 a.m.